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OVERSIGHT OF CONSERVATION PROGRAMS

HEARING

BEFORE THE

SUBCOMMITTEE ON
CONSERVATION AND FORESTRY

OF THE

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE CONSERVATION PROVISIONS OF THE FOOD SECURITY ACT OF 1985

MARCH 24, 1988

Printed for the use of the
Committee on Agriculture, Nutrition, and Forestry



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OVERSIGHT OF CONSERVATION PROGRAMS

THURSDAY, MARCH 24, 1988

U.S. SENATE,
SUBCOMMITTEE ON CONSERVATION AND FORESTRY OF THE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SR-332, Russell Senate Office Building, Hon. Wyche Fowler, Jr. (chairman of the subcommittee) presiding.

Present or submitting a statement: Senators Leahy, Fowler, Heflin, Conrad, Lugar, Dole, Boschwitz, and Karnes.

Also present: Senator Nunn and Representative Lancaster.

STATEMENT OF HON. WYCHE FOWLER, JR., A U.S. SENATOR FROM GEORGIA

Senator FOWLER. Ladies and gentlemen we have a long and very fine witness list. So even before some of my colleagues arrive, I think I will go ahead and begin and make a short a statement, because we need to sort of keep on time due to the quality, as well as the quantity, of the panels this morning.

I want to thank all of the witnesses in advance, the Members of Congress who will testify and everyone here for your participation in this oversight hearing. I can think of no responsibility more fundamental than our duty to examine our conservation measures we have adopted, to try and measure their results and, through your suggestions, make them even more effective.

I especially want to thank my friend and colleague, Senator Nunn, who will be with us momentarily and lead off our witnesses. He has been a leader in the drive to implement better conservation programs, particularly in his work with the Conservation Reserve Program.

Since we passed the farm bill of 1985, numerous scientific studies have consistently verified what good stewards of the land have always known instinctively: that good conservation practices make for more productive agriculture. We have seen higher overall average yields in fields protected from erosion by windbreaks and shelterbelts, by buffers of grasses and trees alongside rivers and streams.

We know without holding a hearing that decreased erosion and increased production make for healthier and more sustainable rural agricultural economies.

So I want to commend Senator Nunn. It is usually more effective when I commend him in his absence. You can tell him I said it later. I commend him for his efforts on behalf of conservation and

on behalf of the agricultural sector of his—of our great State of Georgia—and on behalf of rural Americans in general.

The farm bill of 1985 included several initiatives that responded to the record erosion levels of the 1970's, when our conservation infrastructure collapsed under the fence row to fence row farming of that time.

In the 1985 bill we enacted the swampbuster provisions to protect wetlands and marshes, which provide necessary drainage for more fertile fields, and serve as a rich wildlife habitat. We created sodbuster in the Conservation Reserve, to take other marginal lands out of production and put them in trees and other uses to which they are better suited.

I do think, but we will hear this morning that there is general agreement, that we are on the right track and that we have had some success with all of these programs.

We need to build on this record of success. I hope our examination will turn up new ideas that can enhance our stewardship—either through the next farm bill or in separate legislation dealing with these issues.

It is time to consolidate the progress we have made in the areas of reforestation, riparian buffers, windbreaks, shelterbelts and other means of preventing soil erosion.

We need to think about the best ways to coordinate the programs we do have in place, so that we arrive at the best long range plans for the American countryside—and achieve the optimum interaction between cultivated and uncultivated lands.

We have to consider the effects of our conservation measures, not only on the quality of our agricultural product, but on our water supplies and our wildlife habitats—in short, the overall quality of life in our country.

We do need to take our successes and improve on them, through better implementation of the programs, through incentives for better conservation practices. I think it is clear from our experience that this kind of effort will result in more productive farmlands and a healthier rural economy.

[The prepared statements of Senators Fowler, Dole, and Kasten, follow:]

SUBCOMMITTEE ON CONSERVATION AND FORESTRY

Oversight Hearing
March 24, 1988

- Opening Statement -

By Senator Wyche Fowler, Jr., Chairman

I want to thank the witnesses, the members and everyone here today for their participation in this oversight hearing. I can think of no responsibility more fundamental than our duty to examine the conservation measures we have adopted, to measure their results and to try to make them even more effective.

I especially want to thank my friend and colleague Senator Nunn for taking his time to be with us today. He has been a leader in the drive to implement better conservation programs, particularly in his work with the Conservation Reserve Program.

Since we passed the Farm Bill of 1985, scientific studies have consistently verified what good stewards of the land have always known instinctively: that good conservation practices make for more productive agriculture. We have seen higher overall average yields in fields protected from erosion by windbreaks and shelterbelts, by buffers of grasses and trees alongside rivers and streams.

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So I want to commend my colleague for his efforts on behalf of conservation and on behalf of the agricultural sector of his -- of our -- great state, and on behalf of rural Americans in general.

The farm bill of 1985 included several initiatives that responded to the record erosion levels of the 1970s, when our conservation infrastructure collapsed under the fence-row to fence-row farming of that time.

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I think there is general agreement that we are on the right track, and that we have had some success with all of these programs.

We need to build on this record of success. I hope our examination will turn up new ideas that can enhance our stewardship -- either through the next farm bill or in separate legislation dealing with these issues.

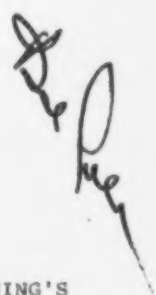
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We need to think about the best ways to coordinate the programs we have in place, so that we arrive at the best long range plans for the American countryside -- and achieve the optimum interaction between cultivated and uncultivated lands.

We have to consider the effects of our conservation measures, not only on the quality of our agricultural product, but on our water supplies and our wildlife habitats -- in short, the overall quality of life in this country.

We need to take our successes and improve on them, through better implementation of the programs, through incentives for better conservation practices. I think it is clear from our experience that this kind of effort will result in more productive farmlands and a healthier rural economy.

• • • •

STATEMENT BY SENATOR BOB DOLESUBCOMMITTEE ON CONSERVATION AND FORESTRY

MR. CHAIRMAN, I WANT TO COMMEND YOU FOR HOLDING THIS MORNING'S HEARING ON CONSERVATION ISSUES. THERE ARE SEVERAL CONSERVATION ISSUES ON FARMERS MINDS TODAY AND I BELIEVE THIS IS BOTH AN APPROPRIATE AND TIMELY OPPORTUNITY TO VOICE THESE CONCERNS.

I'M ALSO PLEASED THAT SENATOR NUNN IS TESTIFYING ON HIS LEGISLATION TO EXPAND THE CONSERVATION RESERVE PROGRAM AND TARGET THE ADDED ACREAGE TO ADDRESS ENVIRONMENTAL CONCERNS. I ALSO WANT TO ADD TO THE HEARING RECORD MY VIEWS REGARDING SIMILAR LEGISLATION I RECENTLY INTRODUCED CALLED THE "ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM", OR ECARP. I FURTHER WANT TO EXPRESS MY APPRECIATION TO THE ORGANIZATIONS THAT HAVE EMBRACED THE CONCEPT AND DIRECTION OF THIS LEGISLATION, INCLUDING THE NATIONAL CORN GROWERS, THE NATIONAL PORK PRODUCERS, THE NATIONAL ASSOCIATION OF WHEAT GROWERS AND THE FERTILIZER INSTITUTE AND I INVITE OTHER FARM ORGANIZATIONS AS WELL AS ENVIRONMENTAL GROUPS TO SUPPORT THIS INITIATIVE.

BACKGROUND

THE CONTAMINATION OF OUR NATION'S WATER -- WHETHER SURFACE WATER OR GROUND WATER -- IS RECEIVING MORE AND MORE ATTENTION. GROUND WATER RESERVOIRS, OR AQUIFERS, CONTAIN NEARLY 50 TIMES THE VOLUME OF THE NATION'S SURFACE WATERS, CONSTITUTE 96 PERCENT OF ALL THE FRESH WATER IN THE U.S., AND ARE THE PRIMARY DRINKING WATER SOURCE FOR ONE-HALF OF THE POPULATION, OR ABOUT 117 MILLION PEOPLE.

ALTHOUGH IT IS NOT YET POSSIBLE TO ASSESS THE EXTENT OF GROUND WATER AND SURFACE WATER CONTAMINATION ON A NATIONAL LEVEL, IT IS A REASONABLE CONCLUSION THAT PREVENTION IS THE BEST CURE. ECARP WOULD ADDRESS THESE CONCERNS BY ESTABLISHING A NEW AND SEPARATE LONG-TERM RESERVE, SIMILAR TO THE CONSERVATION RESERVE PROGRAM (CRP), OF 5 - 20 MILLION ACRES TO TARGET LAND WITH POTENTIAL GROUND WATER, SURFACE WATER, AND OTHER ENVIRONMENTAL AND EROSION PROBLEMS.

THIS BILL GIVES THE SECRETARY OF AGRICULTURE AUTHORITY TO ADDRESS LOCAL AND REGIONAL ENVIRONMENTAL AND EROSION PROBLEMS. IT ALSO GIVES FARMERS GREATER FLEXIBILITY IN DEALING WITH POTENTIALLY CUMBERSOME AND VARYING REGULATIONS BY STATES AND THE EPA. FINALLY, IT WOULD GIVE US MORE TIME TO ASSESS AND DETERMINE THE BEST FEDERAL RESPONSE TO OUR GROWING ENVIRONMENTAL THREAT.

PROVISIONS OF ECARP

AS ACRES ARE ENROLLED INTO THE CRP AND ECARP, FARMERS WOULD BE ABLE TO REDUCE THEIR OBLIGATIONS UNDER ANNUAL SET-ASIDE AND WHOLE-BASE BID PROGRAMS. THIS WOULD ALLOW MORE ACREAGE TO BE IDLED ON A LONG-TERM BASIS TO ADDRESS ENVIRONMENTAL NEEDS WHILE SIMULTANEOUSLY REDUCING TOTAL ACREAGE IDLED UNDER GOVERNMENT PROGRAMS. ACREAGE REDUCTION EFFORTS WOULD THEREFORE BE SHIFTED TO A LONGER-TERM, MORE COST EFFECTIVE BASIS. THE AGRIBUSINESS SECTOR WOULD NOT BE FACED WITH THE PROSPECT OF UNLIMITED INCREASES IN IDLED ACRES SINCE THE TOTAL ACREAGE ALLOWABLE IN THE LONG-TERM RESERVES WOULD REPRESENT 80 PERCENT OF ALL LAND IDLED UNDER ALL FEDERAL COMMODITY AND CONSERVATION PROGRAMS.

FARMERS WOULD GIVE UP PROGRAM PAYMENTS IN RETURN FOR SPECIAL BONUS PAYMENTS AND ANNUAL RENTAL PAYMENTS. TO ENSURE FARMERS RECEIVE ANNUAL RENTAL PAYMENTS ON SCHEDULE, THE BILL CHANNELS FUNDING THROUGH THE COMMODITY CREDIT CORPORATION (CCC). THIS WILL FACILITATE ORDERLY PAYMENTS TO FARMERS AND WOULD PREVENT ADVERSE TAX CONSEQUENCES FROM THE BUNCHING OF PAYMENTS WITH OTHER FARM INCOME WITHIN A SINGLE YEAR. FURTHERMORE, BY RETIRING LAND ON A LONG-TERM BASIS WE CAN ADDRESS EROSION AND WATER QUALITY PROBLEMS AND PROVIDE FOR THE BETTERMENT OF THE WILDLIFE AND RECREATIONAL NEEDS OF FUTURE GENERATIONS.

CONCLUSION

MR. CHAIRMAN, I BELIEVE THIS BILL WILL HELP FARMERS ADDRESS SEVERAL ISSUES INCLUDING THE NEED FOR GREATER FLEXIBILITY IN MANAGEMENT PRACTICES BASED ON ENVIRONMENTAL CONCERNS, THE PROBLEM OF HIGH SET-ASIDES RAISING THEIR COSTS OF PRODUCTION AND MAKING THEIR COMMODITIES LESS COMPETITIVE IN WORLD MARKETS, AND THE NEED TO PROTECT FRAGILE LANDS THAT HAVE SERIOUS ENVIRONMENTAL AND NATURAL RESOURCE LIMITATIONS.

THIS LEGISLATION BALANCES THE VIEWS OF FARMERS, ENVIRONMENTALISTS, AGRIBUSINESS MEN AND WOMEN AND THE FEDERAL GOVERNMENT, WHICH IS HAVING TO PLAY AN EXPANDED ROLE IN PROTECTING OUR NATIONS SOIL AND WATER RESOURCES. I LOOK FORWARD TO WORKING WITH MY COLLEAGUES AND OTHERS IN DEVELOPING A BIPARTISAN CONSENSUS IN THE NEAR FUTURE.

STATEMENT OF
THE HONORABLE ROBERT W. KASTEN, JR.
TO THE
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
MARCH 24, 1988

Mr. Chairman, I appreciate this opportunity to comment on the implementation of the Conservation Title of the 1985 Farm Bill.

The Conservation Title is the strongest piece of soil conservation legislation ever approved by Congress. It denies farm program benefits to farmers who break out highly erodible land (sodbuster) or convert wetlands to cropland (swampbuster), requires the implementation of conservation practices as a condition of receiving farm program benefits (conservation compliance), and allows farmers to retire millions of acres of fragile land through the Conservation Reserve Program (CRP). In my judgement, the Conservation Title should do more for the cause of soil conservation than all the other soil conservation programs operated by the Department of Agriculture from 1933 through the present day.

For the provisions of the Title to be effective, they must be implemented with zeal, determination, and a clear understanding of what they were intended to do. It should be unnecessary to restate the obvious: namely, that the Conservation Title is primarily aimed at conservation.

We should all rejoice if secondary policy objectives, such as controlling the supply of program crops on the market or assisting some financially hard-pressed farmers to leave agriculture voluntarily can be achieved through the CRP or other provisions of the Title. USDA should naturally bear those objectives in mind.

However, it should be clear to everyone that many other, more direct means of achieving these objectives could have been included in this Title of the farm bill had Congress intended that they should take precedence over conservation. The fact that the provisions of the Title refer specifically and repeatedly to such technical conservation terms as erosion rates, land capability classes and the incidence of hydric soils should also serve to indicate the intent of Congress in approving this legislation.

On balance, the Department of Agriculture deserves commendation for the way it has implemented the provisions of the Conservation Title. In particular, USDA has handled well the difficult task of administering the CRP over the last two years.

I want to address one aspect of the Conservation Title that has received much attention recently: the wetlands protection or swampbuster provisions. I do this in the hope of throwing some light on the question of what Congress intended when it enacted this part of the Conservation Title.

I introduced S. 1035, the Fragile Lands Conservation and Wetlands Protection Act of 1985 on May 1st of that year. This legislation contained a separate and distinct Wetlands Conservation title that differed in several important respects from its Highly Erodible Land Conservation Title. The reason I had the bill constructed in this way was simple; wetlands conservation is a different, and in some ways more difficult, assignment than erodible land conservation.

For example, the productivity of most highly erodible land can be restored or at least maintained after having been planted to row crops, if a suitable cover is applied to that land. Wetlands are far more difficult to restore once they have been drained; in some cases, restoration is impossible.

That is why, while the "sodbuster" title of S. 1035 contained an exemption for land cropped between 1981 and 1985, the "swampbuster" section contained no such exemption. It did contain an exemption for cases where the conversion of a wetland began prior to enactment, and other exemptions were added during mark-up in the Agriculture Committee and in the House-Senate Conference. However, this basic distinction between sodbuster and swampbuster was maintained in the final bill. I have no reason to believe that this distinction was not clearly understood by those in the Senate and at USDA who worked on the Conservation Title during 1985.

One of the exemptions added to the swamp-buster section of the Conservation Title dealt with "wetland on which the production of an agricultural commodity is possible as a result of a natural condition, such as drought, and without action by the producer that destroys a natural wetland characteristic." Concern has been expressed that this exemption fails to cover many ephemeral wetlands, flooded for only a short time at the beginning of the year, that a farmer had cropped in years prior to enactment of the Conservation Title and that may have no value for nesting waterfowl and other wildlife.

In this connection, it is important to note that the depth or permanence of a wetland is not necessarily a guide to its value as a feeding, nesting and breeding spot for waterfowl. In fact, shallow, ephemeral wetlands are among the most important elements of waterfowl habitat, especially in the prairie pothole region in the Dakotas. To cite only one example, the availability of numerous small wetlands allows waterfowl populations to disperse over wide areas, rendering them less vulnerable to predators as well as to epidemics.

It is doubtless true that some farmers must contend with very small "nuisance" spots that in fact are rarely if ever used by waterfowl or other wildlife. It was never my intention -- nor, I believe, that of other Senators -- that such wet spots should be covered by swampbuster.

Furthermore, where small wet areas have been intensively farmed for several years and been subjected to continual applications of pesticides, herbicides, and chemical fertilizers, it is worth considering whether they should be regarded as desirable habitat for waterfowl. More research is needed in this area.

In conclusion, it seems clear that faithfulness to the Congressional intent behind swampbuster would permit exemptions for "nuisance" spots of no value as waterfowl habitat, groundwater recharge, or other important functions of wetlands, but not otherwise. However, it is not clear that the current wording of the law permits such exemptions. In particular, it is difficult to see how granting an exemption based only on a given area's cropping history can be reconciled with the plain language of the Act.

In my judgement, legislation on this subject would be inappropriate before USDA, in cooperation with the Fish and Wildlife Service and other relevant federal agencies, has had a chance to study the matter thoroughly. In the event that legislation is thought necessary after such study, it might take the form of expanding the so-called "minimal effects" exemption to include actions necessary to allow timely planting on wet spots demonstrably of no value.

It is important to restate an essential fact about swampbuster: it does not restrict what any farmer can do with his or her land. Farmers are not precluded from converting wetlands by swampbuster any more than they are precluded from plowing up highly erodible land by sodbuster.

What swampbuster and sodbuster do is simply prevent federal farm program benefits from going to farmers who abuse the environment.

There are some who contend that the right to receive tens of thousands of dollars in public money should not depend on abiding by the conditions set forth in the Conservation Title. According to this line of argument, sodbuster, swampbuster, and conservation compliance must be repealed or delayed if they inconvenience farmers or force changes in farming practices.

This contention must be rejected, first, because the government must always be able to set conditions of eligibility when it disburses the taxpayers' money. But it should be rejected also because protecting our soil and wetland resources is vital to our future and to our childrens' future. Not least, protecting our environemnt is vital to the future of agriculture itself.

We would do agriculture in particular and our country in general no service by weakening sodbuster or swampbuster, delaying conservation compliance, or otherwise turning back from the strong pro-conservation course mapped out by Congress in the 1985 farm bill.

Senator FOWLER. My friend and colleague, the senior Senator from Georgia, has arrived. I have said some very nice things in your absence.

Senator NUNN. You can repeat them if you like.

Senator FOWLER. I think instead, I will send you an autographed copy of my remarks which gives you the proper credit for your leadership, especially in the Conservation Reserve Program, and many other agricultural matters on behalf of our state and on behalf of our country, especially our rural countryside for which we commend you. We are very pleased to have you as our leadoff witness this morning, Senator Nunn.

STATEMENT OF HON. SAM NUNN, A U.S. SENATOR FROM GEORGIA

Senator NUNN. Thank you very much, Mr. Chairman, Senator Conrad. I am delighted to have a chance to be here before your subcommittee and I commend you, Senator Leahy, as chairman of the committee, and the other members of the Agriculture Committee for holding this hearing to review the progress of the conservation programs contained in the 1985 farm bill, and to discuss improvements which may need to be made.

Mr. Chairman, I know that you have got a busy schedule today. I see a very full agenda and so I am cutting my remarks down and I would like for my entire statement, at the Chairman's discretion to be put in the record.

In 1983, I introduced S. 2148, the Conservation and Forestation Act of 1983, one of the first pieces of legislation which was directed toward reestablishing a conservation program similar to the Soil Bank Program of the 1950's, which I think worked extremely well. I reintroduced this legislation in the 99th Congress in 1984 and worked closely with members of this committee and also members on the House side during the development of the 1985 farm bill to ensure that a strong conservation title was included. I was particularly pleased that the final version of the 1985 farm bill contained language which I suggested, and others also suggested it, to expand the Conservation Reserve Program [CRP] from 25 to 45 million acres and, also, to specifically require that 12.5 percent of the Conservation Reserve Program be planted in trees.

I am delighted with the results of the CRP Program thus far, Mr. Chairman. In my view, the CRP has been the most creative and successful component of the 1985 farm bill. With the addition of lands from the February 1988 signup, which has just been completed, more than 27 million acres of highly erodible land, cropland, have been enrolled in the CRP.

Recent studies indicate that as much as 25 tons of topsoil are saved on each acre of highly erodible land enrolled in the CRP. Estimates indicate that the CRP saved as much as 500 million tons of topsoil in 1987 alone. The CRP has also aided in reducing surplus crop production. According to a study commissioned by the American Farmland Trust—which I have just had a chance to look over—wheat prices are predicted to be 21 cents per bushel higher and corn prices 12 cents per bushel higher by 1990 because of the CRP Program. This same study indicates that these higher prices,

together with less acreage available for commodity payments, will reduce Government outlays by more than \$8.8 billion during the life of the current CRP Program. Mr. Chairman, Senator Conrad, don't hold me to this because these are last night's calculations, but, according to the study as I calculated, Government cost for the CRP payment and cost sharing will total about \$8.2 billion. And, if you look at the savings, the direct budgetary savings versus the cost, it looks to me as if there is a net budget savings of some \$600 million during the life of the program.

So this program, truly, not even counting the soil erosion features; not even counting the timber supply that is going to be there for years to come; not even counting the tremendous cost avoidance in terms of water pollution in our streams. It seems to me that this study indicates that it is a net savings over the whole life of the program in commodity cost off-set compared to outlays for the program. So this is a rare animal indeed in terms of Government programs.

Few experts would disagree that CRP is a much more cost-effective acreage-reduction program than set-asides or diversion programs. Farm income has been higher because of the CRP, with badly needed cash, in the form of annual CRP rental payments, flowing to many hard-pressed farm families. Experts predict that total U.S. farm income will be increased by \$2 to \$3 billion during the 1986-1990 timeframe because of the CRP.

In July 1987, as a followup on the existing CRP Program, I introduced S. 1521, along with Senators Heflin, Hollings, Harkin, Fowler—Mr. Chairman, you were a cosponsor of that as you well know—and Senator Cochran. This bill provides authorization for a further expansion of the CRP, provides additional reforestation incentives, and more directly targets the future CRP Program to address the growing water quality problems facing our Nation. It was my hope in introducing S. 1521, and it is my hope now that my proposal would help to keep a spotlight on the CRP Program and further the public debate about the future role of CRP and other conservation programs in the context of broader U.S. agriculture policy.

Since the introduction of S. 1521, I have been contacted by numerous individuals and groups throughout the country who are interested in the future of the CRP. I have received many suggestions for improvements in the current program. Many of these recommendations were discussed at the hearing this subcommittee held under your guidance, Mr. Chairman, in Macon, Georgia, earlier this year.¹ So I commend you for your leadership on these conservation issues. Other suggestions for improvement of the CRP will be presented by witnesses here today. While most agricultural and forestry leaders I have talked with support further expansion of the CRP, I have heard from a number of people who are concerned about the size of the program and the impact on rural America. So I believe that all aspects of the issue must be fully analyzed before further legislation is adopted.

¹ Review of the Conservation Reserve Program—Georgia Forestry Commission, S. Hrg. 100-564, January 19, 1988.

S. 1521 has several major goals:

First, authorizing the expansion of the Reserve from 45 million to 65 million acres in order to retire additional highly erodible cropland and lands contributing to serious water quality problems.

Second, providing farmers with new incentives and options for enrolling land in the CRP Program, including allowing a specified number of acres placed in the CRP to be considered as reduced or set-aside acreage under acreage limitation programs, and a broader range of noncrop economic uses of land in the Reserve.

Third, mandating that the Secretary of Agriculture use the Reserve to address serious regional water quality or supply problems, at least on a pilot project basis.

Fourth, requiring the Secretary of Agriculture to provide additional incentives for planting of trees within the CRP in order to meet the tree planting requirements of the 1985 farm bill which I eluded to previously.

Fifth, ensuring a sound financial base for the Reserve by reestablishing its funding through the Commodity Credit Corporation (CCC).

I am pleased to report that some of these objectives have already been indirectly addressed through recent actions taken by the Secretary of Agriculture. For example, USDA released new regulations prior to the February signup which focused primarily on the issue of how to meet the 12.5 percent tree planting requirement as outlined by the 1985 farm bill. Prior to this signup, CRP fell well below this target level for acreage converted to tree planting. In the first five signups, for example, the average number of acres devoted to tree planting was approximately 5 percent.

At the end of last year, I joined several other Members of the Senate and House in urging Secretary Lyng to review this situation. The Department responded by making two important changes in the program's eligibility provisions for tree planting. And I think these two changes have had, and will have, a big effect.

First, to be eligible for previous signups, lands had to erode at an annual average erosion rate of 3T or greater. Under the recent administrative changes, cropland eroding at 2T is eligible provided it is planted in trees. In other words, the erosion factor can be less severe and still qualify under the new regulations.

Second, previous signups required that two-thirds of a field be highly erodible land for an entire field to qualify. Under the new regulations, only one-third of the field needs to be highly erodible for the entire field to be planted in trees. This rule change will make the CRP erodibility standards for tree planting consistent with the conservation compliance regulations. This change should not only increase CRP tree planting, but will help many farmers achieve conservation compliance as well.

I want to commend the Department for taking these positive steps. As a result of these changes, the initial figures from the February signup indicate that over 536,000 acres were enrolled for tree planting—out of a total sixth signup of 4.5 million acres bid—a level of 12 percent for trees. In our home State of Georgia, Mr. Chairman, this change generated a tremendous amount of enthusiasm for the program with 228,831 acres bid for signup and 94 percent of these were designated for tree planting in our State. These changes not only will assist in protecting our Nation's topsoil, but

also in our Nation's reforestation efforts at a time when many forestry experts have predicted that the United States could face a timber shortage as early as the year 2010.

Now that sounds like a long time off, but timber companies and everybody involved in the forest products business plans a long, long way ahead. So when you get that kind of prediction, unless you turn it around, it begins to have a real effect on where people locate plants and plan their future.

Mr. Chairman, a key element of S. 1521 is designed to address agricultural water quality problems. Around the Nation, agriculture's contribution to water quality problems is growing more apparent, as progress has been made in reducing industrial and other types of pollution while the use of agricultural chemicals increases. In the 1980's surface and ground water contamination with fertilizers and pesticides is rapidly emerging as the dominant environmental problem in certain intensively farmed regions. National and State water quality monitoring programs are expanding rapidly. The 1985 farm bill is helping to solve the Nation's soil erosion problem. Similar concepts and policy innovations should now be targeted toward improving water quality.

At a minimum, I believe we should:

First, expand the CRP enrollment in areas around reservoirs, estuaries and other bodies of water that contribute disproportionately to sedimentation and chemical pollution.

Second, I believe we should encourage shifts in land use patterns in regions where current irrigation practices are unprofitable and environmentally unsustainable.

Third, I believe we should build into the Federal farm programs clear and meaningful disincentives to discourage farming techniques and management practices that are unacceptable in light of local conditions. These standards of stewardship and resource management should be set and enforced at the local level.

New policies should be designed and implemented without delay to encourage producers to use the best management practices and to follow land use patterns that help protect water quality.

This proposal, S. 1521, directs the Secretary of Agriculture to initiate a special water quality protection program utilizing the Conservation Reserve Program. It does give the Secretary considerable flexibility.

Later this year and throughout 1989, work will progress on the 1990 farm bill. In this process, the new administration and the Congress must continue to unravel many conflicting, often unproductive features of current U.S. farm programs. There are many economic, environmental, and social problems facing U.S. agriculture, and indeed, rural America. In the 1990's, these problems must be solved in a much more competitive international climate and with much less reliance, as we all know, on Federal public funds than was the case in the 1980's.

A 1990 farm bill must create regional opportunities for profitable agriculture, forestry, aquaculture, and related enterprises. It should benefit from the lessons learned in the 1980's and build on the positive new policy directions begun in the 1985 farm bill. Like the CRP, it should reflect a clear understanding of the connections between economic farming and environmental problems. I look for-

ward to working with this committee on the conservation title, as well as other sections of the 1990 farm bill.

Mr. Chairman, before I complete my remarks, I would also like to very briefly touch on subtitle C of the conservation title of the 1985 farm bill, commonly known as swampbuster.

In my view, the Congress demonstrated wisdom and foresight when the swampbuster and sodbuster provisions were enacted in the 1985 farm bill. These programs rest on the principle that the Federal taxpayer should not continue to subsidize agricultural conversion of highly erodible land or wetlands.

In recent years, we have all become increasingly aware of the significant value of wetlands, as well as the fact that they are being destroyed at an alarming rate. I am aware, however, that some people are unhappy with the swampbuster and seek to change the statute by reducing, for example, the types of wetlands that would be covered. I know this committee will be interested in their thoughts and ideas and you will hear from some of them this morning and some later. I must say that I am a little skeptical going in about whether we should make the changes in that legislation at this time. Sodbuster and swampbuster were carefully drafted pieces of legislation, and I certainly believe that we ought to proceed with caution in changing the basic coverage. Certainly, we ought to make sure we have had enough experience with its administration to make intelligent changes about revision.

Mr. Chairman, I again thank you for inviting me to appear before your subcommittee today, and I look forward to working with you, Senator Conrad, Senator Lugar and Senator H. flin and other members of this distinguished committee in drafting this and other farm legislation.

[The prepared statement of Senator Nunn follows:]

STATEMENT OF SENATOR SAM NUNN
BEFORE THE
SUBCOMMITTEE ON CONSERVATION AND FORESTRY
SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
MARCH 24, 1988

Thank you, Mr. Chairman, for providing me this opportunity to appear before your subcommittee. I commend you, Chairman Leahy, and the other members of the Agriculture Committee for holding this hearing to review the progress of the conservation programs contained in the 1985 Farm Bill and to discuss improvements which may need to be made. This hearing should also provide useful information to the committee as the Congress begins to focus on the 1990 Farm Bill.

In 1983, I introduced S. 2148, the Conservation and Forestation Act of 1983, one of the first pieces of legislation to authorize the re-establishment of a conservation program similar to the Soil Bank of the 1950's. I re-introduced this legislation in the 99th Congress in 1984 and worked closely with members of this committee during the development of the 1985 Farm Bill to ensure that a strong conservation title was included. I was particularly pleased that the final version of the 1985 Farm Bill contained language I suggested to expand the Conservation Reserve Program (CRP) from 25 to 45 million acres and require that 12.5% of the CRP be planted in trees.

I am delighted with the results of the CRP thus far. In my view, the CRP has been the most creative and successful component of the 1985 Farm Bill. With the addition of lands from the February 1988 sign-up, more than 27 million highly erodible acres of cropland have been enrolled in the CRP.

Studies indicate that as much as 25 tons of top soil are saved on each acre of highly erodible land enrolled in the CRP.

Estimates indicate that the CRP saved as much as 500 million tons of top soil in 1987. The CRP has also aided in reducing surplus crop production. According to a study commissioned by the American Farmland Trust, wheat prices are predicted to be 21 cents per bushel higher and corn prices 12 cents per bushel higher by 1990 because of the CRP. This same study indicates that these higher prices, together with less acreage available for commodity payments, will reduce government outlays by more than 8.8 billion dollars during the life of the current CRP program. According to the study, government cost for CRP payments and cost sharing will total approximately 8.2 billion dollars, resulting in a net budget savings of \$600 million dollars during the life of the program.

Few experts would disagree that the CRP is a much more cost-effective acreage-reduction program than paid set-asides or diversion programs. Farm income has been higher because of the CRP, with badly needed cash in the form of annual CRP rental payments flowing to many hard-pressed farm families. Experts predict that total U.S. farm income will be increased by 2-3 billion dollars during the 1986-1990 time frame because of the CRP.

In July, 1987, as a follow-up to the existing CRP program, I introduced S. 1521 along with Senators Heflin, Hollings, Harkin, Fowler and Cochran. This bill provides authorization for a further expansion of the CRP, provides additional reforestation incentives, and more directly targets the future CRP program to address the growing water quality problems facing our nation. It

was my hope in introducing S. 1521, and it is my hope now that my proposal would help to keep a spotlight on the CRP program and further the public debate about the future role of CRP and other conservation programs in the context of broader U.S. agriculture policy.

Since the introduction of S. 1521, I have been contacted by numerous individuals and groups from throughout the country who are interested in the future of the CRP. I have received many suggestions for improvements in the current program. Many of these recommendations were discussed at the hearing this Subcommittee held in Macon, Georgia, earlier this year. I want to commend you, Mr. Chairman, for holding this hearing and for your fine leadership on conservation issues. Other suggestions for improvement in the CRP will be presented by witnesses here today. While most agricultural and forestry leaders I have talked with support further expansion of the CRP, I have heard from a number of people who are concerned about the size of the program. I believe all aspects of this issue must be fully analyzed before further legislation is adopted.

S. 1521 has several major goals:

First, authorizing expansion of the reserve from 45 million to 65 million acres in order to retire additional highly erodible cropland and lands contributing to serious water quality problems;

Second, providing farmers with new incentives and options for enrolling land in the CRP, including allowing a

specified number of acres placed in the CRP to be considered as reduced or set-aside acreage under acreage limitation programs, and a broader range of noncrop economic uses of land in the reserve. This would allow shifts and diversification of cropping patterns while reducing reliance on government commodity program payments;

Third, mandating that the Secretary of Agriculture use the Reserve to address serious regional water quality or supply problems, at least on a pilot program basis;

Fourth, requiring the Secretary of Agriculture to provide additional incentives for planting of trees within the CRP in order to meet the tree-planting requirements of the 1985 Farm Bill; and

Fifth, ensuring a sound financial base for the reserve by re-establishing its funding through the Commodity Credit Corporation (CCC). For a host of reasons, the CCC is a much more reliable source of funding than a line item in the annual appropriations cycle.

I am pleased to report that some of these objectives have been indirectly addressed through recent actions taken by the Secretary of Agriculture. For example, USDA released new regulations prior to the February sign-up which focused primarily on the issue of how to meet the 12.5% tree-planting requirement as outlined by the 1985 Farm Bill. Prior to this sign-up, CRP fell well below this target level for acreage converted to tree-planting. In the first five sign-ups, for example, the

average number of acres devoted to tree planting was approximately 5%.

At the end of last year, I joined several other members of the Senate and House in urging Secretary Lyng to review this situation. The Department responded by making two important changes in the program's eligibility provisions, which apply exclusively to land designated for tree planting.

First -- to be eligible for previous sign-ups, lands had to fall within Land Capability Classes (LCC) six (6) through eight (8) or have an average annual erosion rate of 3T or greater if it fell within classes two (2) through five (5). Under the recent administrative change, cropland in Land Capability Classes two (2) through five (5) are eligible if it is eroding at 2T provided that it is planted in trees.

Second -- previous signups required that two-thirds of a field be highly erodible land for an entire field to qualify. Under the new regulations, only one-third of the field needs to be highly erodible for the entire field to be planted in trees. This rule change will make CRP erodibility standards for tree planting consistent with Conservation Compliance regulations. This change should not only increase CRP tree planting, but will help many farmers achieve Conservation Compliance as well.

I want to commend the Department for taking this positive action. As a result of this change, the initial figures from the

February signup indicate that more than 536,000 acres were enrolled for tree planting (out of a total sixth signup of 4.5 million acres bid), a level of 12% for trees. In my home state of Georgia, this change generated a tremendous amount of enthusiasm for the program with 228,831 acres bid for sign-up -- 94% of these acres were designated for tree planting. These changes not only assist in protecting our nation's top soil but also in our nation's reforestation efforts at a time when many forestry experts have predicted that the United States could face a timber shortage as early as 2010.

The Department focused on another provision which was not restricted to tree-planting acreage. In previous signups, only eligible cropland meeting the criteria for highly erodible land was allowed to be enrolled into the Reserve. The Department's new regulations allow cropland to be enrolled that does not meet these strict criteria if it is used as a filter strip to reduce sedimentation.

Mr. Chairman, a key element of S. 1521 is designed to address agricultural water quality problems. Around the nation, agriculture's contribution to water quality problems is growing more apparent, as progress has been made in reducing industrial and other types of pollution while the use of agricultural chemicals increases. In the 1980s, surface and ground-water contamination with fertilizers and pesticides is rapidly emerging as the dominant environmental problem in certain intensively farmed regions. National and state water quality monitoring programs are expanding rapidly. The 1985 Farm Bill is helping to

solve the nation's soil erosion problem. Similar concepts and policy innovations should now be targeted to improving water quality.

At a minimum we should:

- 1) -- expand CRP enrollment in areas around reservoirs, estuaries, and other bodies of water that contribute disproportionately to sedimentation and chemical pollution.
- 2) -- encourage shifts in land use patterns in regions where current irrigation practices are unprofitable and environmentally unsustainable.
- 3) -- build into federal farm programs clear and meaningful disincentives to discourage farming techniques and management practices that are unacceptable in light of local conditions. These standards of stewardship and resource management should be set and enforced at the local level.

Although most of the agricultural community realizes that new water quality protection initiatives are needed, legal and scientific debates will surely go on for years regarding safe levels of pesticides and nitrates in drinking water. But local and state regulators and civic leaders will not wait for the outcome of these debates. They will demand more immediate action. New policies should be designed and implemented without delay to encourage producers to use "best management practices" and to follow land use patterns that help protect water quality.

My proposal, S. 1521 directs the Secretary of Agriculture to

initiate a special water quality protection program utilizing the Conservation Reserve Program.

Later this year and throughout 1989, work will progress on the 1990 Farm Bill. In this process, the new administration and the Congress must continue to unravel many conflicting, often unproductive features of current U.S. farm programs. There are many economic, environmental and social problems facing U.S. agriculture. In the 1990s, these problems must be solved in a much more competitive international climate and with much less reliance on public funds than was the case in the mid-1980s.

A 1990 Farm Bill must create regional opportunities for profitable agriculture, forestry, aquaculture, and related enterprises. It should benefit from the lessons learned in the 1980s and build on the positive new policy directions begun in the 1985 Farm Bill. Like the CRP, it should reflect a clear understanding of the connections between economic and environmental problems. I look forward to working with this Committee on this Conservation title and other sections of the 1990 Farm Bill.

Mr. Chairman, before I complete my remarks, I would also like to briefly address Subtitle C of the Conservation Title of the 1985 Farm Bill, commonly known as "Swampbuster." In my view, the Congress demonstrated wisdom and foresight when the Swampbuster and Sodbuster provisions were enacted in the 1985 Farm Bill. These programs rest on the principle that the federal taxpayer should not continue to subsidize agricultural conversion of highly erodible land or wetlands.

In recent years, we have all become increasingly aware of the significant value of wetlands as well as the fact that they are being destroyed at an alarming rate. I am aware, however, that some people are unhappy with Swampbuster and seek to change the statute by reducing, for example, the types of wetlands that would be covered. I am dubious about the need for such legislation at the present time. Sodbuster and Swampbuster were carefully drafted pieces of legislation, and I would be reluctant to change the act to reduce its coverage, certainly not before we have enough experience with its administration to make intelligent decisions about revisions.

Mr. Chairman, again I thank you for inviting me to appear before your subcommittee today, and I look forward to working with you and the other members of this committee on future CRP legislation and other agricultural issues of importance to our state and nation.

Senator FOWLER. Thank you very much, Senator. Any questions?
 Senator CONRAD. Just briefly, Mr. Chairman. Welcome, Mr. Vice President. Senator from Georgia, excuse me, I have been reading the Washington Post.

Senator FOWLER. You are ahead of me.

Senator CONRAD. I hope that, that might happen someday. Let me just indicate on the comments on swampbuster. I come from a State that is having very serious problems with swampbuster and I just wanted to bring to the Senator's attention two problems. One, swampbuster was sold to the Congress on the basis that we would not be converting wetlands in the future. It was very clear from the legislative history, and we have gone through it laboriously, that Congress thought it was passing legislation that would not affect land that had been previously cropped.

Unfortunately, when the regulations are written and the final law is interpreted, that is not what we are experiencing. And that is creating very serious problems and I think we've got a time bomb on our hands across rural America on this question, because it is one thing not to convert wetlands in the future. It is quite another to go back to a farmer who has been cropping something over a long period of time and tell him, well, you cannot farm that anymore.

The second problem is the penalty provision, because basically you have got a drop dead penalty here. The penalty is you lose all farm program payments for even a minor violation. There is no gradation in the penalty structure and so those who are going to be with us today talking about the need for some changes, I think, have a reasonable case. I hope all of us would keep an open mind. There is no intent to overturn swampbuster or sodbuster. In principle, they make great sense. But in implementation they leave something to be desired.

Senator NUNN. Thank you very much, Senator Conrad. I have not heard the testimony and I think we ought to listen very carefully to it. I am sure there will be constructive suggestions. I will have somebody on my staff here monitoring too. I will be glad to visit with you on that. I have great admiration and respect for your expertise in this area. So, I welcome our dialog. I am sure the committee will.

Senator Lugar, I am not going to answer any questions about the broad or narrow interpretation of the ABM Treaty this morning, no matter what your questions. Every time you and I are together, I think we have to talk about that subject, don't we?

STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR FROM INDIANA

Senator LUGAR. I know. I just join in welcoming the distinguished senior Senator from Georgia and the distinguished junior Senator, our chairman today, and I ask that a prepared statement that I would have made in full be made a part of the record.

Further, the bill that you have outlined, I think, has a great deal of interest for all of us. As an anecdotal situation, in the 1985 farm bill, I was interested in this area, as many were, introduced the bill and invited the Secretary of Agriculture, Mr. Block, to come out to

my farm where he endorsed it there on a bale of hay and so we have some good memories of that experience. It is something that is widely shared, it is just tremendously important that we improve. The forestry suggestions you made, I think, are especially significant.

I want to mention that I look forward to hearing the testimony of Congressman Lancaster and likewise, the galaxy of distinguished witnesses. I want to pay a special tribute to Don Henderson, the vice president of the Indiana Farm Bureau Federation, who we will be hearing from in due course, a very dear friend. It is great to have him here with us today.

Mr. Chairman, at some point, not too long from now, I will have to depart for the INF markup that Sam Nunn has mentioned. We are going at it fast and furiously and will hope to return if we should have a success in that venture.

[The prepared statement of Senator Lugar follows:]

STATEMENT OF SENATOR LUGAR AT THE CONSERVATION SUBCOMMITTEE
HEARING ON MARCH 24, 1988

I would like to thank the distinguished Chairman of the Subcommittee on Conservation and Forestry for holding this oversight hearing on conservation programs. As the major author of the Conservation Title of the Food Security Act of 1985, I have a continuing interest in seeing that these provisions are implemented in the reasonable and rational manner that members of this Committee intended.

I am pleased that Senator Nunn and Congressman Lancaster have taken time out of their schedules to be here today to offer their ideas on conservation programs. Moreover, I look forward to hearing the testimony of representatives of the Administration regarding these programs. As I understand it, EPA has some especially novel ideas to share with us today.

I also would like to welcome the representatives of the other interested groups who will testify today. On a more parochial note, I especially look forward to hearing the testimony of my friend from Indiana, Don Henderson, the Vice President of the Indiana Farm Bureau Federation. Don has been kind enough to share the experiences of his members with me in the past and I plan to study his remarks in detail.

Mr. Chairman, as I mentioned earlier, I spent many hours working on the Conservation Title of the 1985 Farm Bill and there is one area that I believe deserves further study by the Committee. In putting together the wetlands conservation section of the Title, it was my understanding, and, I believe, the understanding of the Committee as a whole, that fields that had been historically planted to a crop would be exempt from the swampbuster penalties in the Conservation Title. However, I believe that Congressional intent from 1985 has been misunderstood with regard to cropping history. It is my hope that we can correct this misunderstanding.

Mr. Chairman, I was, and I remain, a strong supporter of the swampbuster provision. I believe the issue of exempting wetlands with a cropping history is a debatable one and I would be willing to consider this issue carefully this year on its merits.

Once again, I thank the distinguished Chairman for holding this hearing. While other commitments will force me to leave before the hearing ends, I look forward to studying the record of today's proceedings.

Senator FOWLER. We give you special dispensation. I am very pleased we could start off with you this morning. Also I am glad to have Senator Karnes and Senator Heflin, who have been acknowledged. Thank you Senator Nunn, very much.

Senator NUNN. Thank you, Mr. Chairman. The only other word I would say, I do want to point out again that the Department of Agriculture, I think, has been on top of this program and really done a good job. Peter Meyers, I particularly want to give a pat on the back, because they have really worked hard. They have been receptive to taking a look at changes where they were needed. I think this is a good example of some flexibility in the administration of a program that has been most desirable. Thank you, Mr. Chairman.

Senator FOWLER. Thank you very much. We are glad to now hear from our colleague from the House, Representative Martin Lancaster from the great State of North Carolina. Martin, we welcome you and as you know if you would like to summarize your testimony we will put the whole shooting match in the record.

STATEMENT OF HON. H. MARTIN LANCASTER, A REPRESENTATIVE IN CONGRESS FROM THE FOURTH CONGRESSIONAL DISTRICT, STATE OF NORTH CAROLINA

Mr. LANCASTER. Thank you, Mr. Chairman. I would request that my full remarks be included in the record. I would also request that you include, following my remarks, the prepared statement which would have been made by the North Carolina Farm Bureau Federation by John Parker. Because of the quality and quantity of witnesses who requested to be able to testify today, he was not able to get on the list. So, if you would, that statement has been provided to your staff and I would request that it be included in the record.

Senator FOWLER. Without objection, it will be.

Mr. LANCASTER. Good morning, Mr. Chairman, and members of the subcommittee. Thank you for allowing me to testify today on the implementation of the conservation provisions of the 1985 farm bill. I will confine my testimony to a discussion of how certain parts of the conservation law are affecting my North Carolina constituents.

Mr. Chairman, my comments today do indeed come directly from my constituents in North Carolina. This past Saturday, the 19th of March, I held a public meeting in Raleigh to allow interested farmers in my district to discuss their problems with sodbuster, swampbuster, and conservation compliance provisions of the 1985 farm bill. The meeting was held jointly with Congressman David Price, who represents the Fourth District of North Carolina. Wilson Scaling, Chief of the Soil Conservation Service, attended this meeting at our request.

BACKGROUND

Mr. Chairman, farmers in North Carolina will face special problems when it comes to complying with the conservation provisions of the 1985 farm bill. We are a State of many small farms. We have more farms in absolute numbers than the State of Texas, and at a fraction of its size. Many of our counties are poor and have

never had the resources to do soil mapping, so farmers in these areas are handicapped in complying with the new conservation requirements. Because of the shortage of local resources, many counties have only one soil conservationist and from time to time counties actually have to share conservationists. More than 75 percent of the farms in the western two-thirds of our State fall within the highly erodible category. Our major crops—tobacco, soybeans, cotton, and peanuts—are all clean cultivation crops, which present special conservation problems, especially when these crops are produced on erodible land. An unusually high number of the landlords of our very small farms are older citizens with limited or no outside income to fund the conservation practices required by the conservation plans. Since our farmers have so many landlords, the farmer and his landlords run significant risks that the producer will not be able to bring into compliance one small farm in a large overall operation, and thus deprive the entire operation of Federal benefits. In addition, there is no way the landlord can determine for himself the state of compliance on the many small farms in order to protect himself from the negligence of his operator or the recalcitrance of a fellow landlord.

SODBUSTER AND CROPPING HISTORY

Because of the special circumstances of tobacco farming, it may be especially difficult for owners and operators to find capital to pay for new conservation plans. Many tobacco holders are elderly and simply do not have the money to invest in the needed improvement. Thus, the operator becomes responsible for his farming practices and will be forced to pay for the plan. However, many operators farm 10 or more different farms in different areas of the same county or in different counties. The burdens on the farm operator will be substantial. First he must find the cropping history for each of the farms, then if necessary, he must create and implement an approved conservation plan for each farm. Compounding the problem is the economic reality that operators have little incentive to pay for new conservation practices on a farm that may well be leased to a different farmer the next year.

SOIL CONSERVATION SERVICE RESOURCES

Mr. Chairman, I am sure that you will hear about these problems from several of your witnesses today. The demand on the Soil Conservation Service to help farmers produce new conservation plans may reach a breaking point prior to the 1990 conservation compliance deadline. This problem will be especially severe in areas like North Carolina that are composed of mostly small farms. Each farm will need its own conservation plan. In addition, a single large farm might have more than one operator and some farms may cross county or district lines, necessitating the farmer to deal with multiple offices. In working with multiple districts, the farmer will find varying levels of skill in the application of technical rules by the staff of the agency. There will be different interpretations of the same regulations, and different conservation committees will review the work-product.

Because of the shortage of personnel and the large number of farmers that will need assistance, group planning sessions are the only practical way to get the job done. However, the planning process is very complicated and many farmers lack the sophistication to work in large groups and understand all of the terminology, formulas, and technical requirements. Many farmers absolutely must have the personal attention of a one-on-one situation. The conservationist will also need to go on the land to see if existing conservation practices are working. I believe the SCS should approve existing practices, if adequate, rather than promoting the use of new practices that may look good on paper, but prove to be difficult or expensive to implement. We will need to fully support the SCS in its efforts to help our farmers with the conservation requirements of current law.

CONSERVATION COMPLIANCE

It is truly anomalous that some of the rotation requirements now set out in regulations may actually require some farmers to bear the expense of clearing additional land which may be marginal or unproductive. If the farmer has to have a certain number of acres of cropland per acre of allotment, he will have to clear that land or buy additional acreage in order to meet the rotation requirements. That is not an option for many farmers.

One of the purposes of this legislation was to remove from production unproductive and marginal cropland. I would hope that slavish compliance with formulas and rotation requirements would not serve the exact opposite purpose. We may risk removing productive land from cultivation simply because of the difficulty of complying with technical requirements.

CONCLUSION

Mr. Chairman, I am not here to ask that this subcommittee rewrite the 1985 farm bill. Its intent and goals are far too valuable. However, I believe the Department, and others who are interested in the implementation of these conservation programs, need to be aware of the special circumstances that face the farmers of North Carolina. As you well know, farming in Georgia is not like farming in Kansas, or California, or Washington. The Department must carefully implement these programs to ensure that unintended hardships are minimized. Unless reason prevails in the implementation of these programs, we may save the land, but lose the farmer.

This concludes my statement. I am happy to respond to any questions that you may have. Again, thank you for allowing me to present this testimony today.

[The prepared statements of Mr. Lancaster and the North Carolina Farm Bureau Federation follow:]

TESTIMONY OF
REPRESENTATIVE MARTIN LANCASTER
BEFORE THE
SUBCOMMITTEE ON CONSERVATION AND FORESTRY OF THE
SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY
MARCH 24, 1988

Good morning Mr. Chairman and Members of the Subcommittee. Thank you for allowing me to testify today on the implementation of the conservation provisions of the 1985 farm bill. I will confine my testimony to a discussion of how certain parts of the conservation law are affecting my North Carolina constituents.

Mr. Chairman, my comments today do indeed come directly from my constituents in North Carolina. This past Saturday, the 19th of March, I held a public meeting in Raleigh, North Carolina, to allow interested farmers in my district to discuss their problems with the "sodbuster," "conservation compliance," and "swampbuster" provisions of the 1985 farm bill. The meeting was held jointly with Congressman David Price, who represents the 4th District of North Carolina. Wilson Scaling, Chief of the Soil Conservation Service, attended this meeting at our request. We are grateful that Mr. Scaling was able to attend as he provided some very useful information. The meeting was well attended and a number of important problems were noted. I believe the members of this Subcommittee should keep these problems in mind as you consider offering the Department guidance on the implementation of these important provisions of law.

The goals of the conservation provisions of the 1985 Food Security Act are noble. The economic need to reduce production while improving soil and water quality through the removal of excessively erodible lands is real and widely recognized.

Moreover, as a matter of policy, it does not make sense for taxpayers to support farming practices that damage the soil and water resources of our nation. However, this link between conservation requirements and the commodity programs is new. Heretofore, all conservation programs of the Department of Agriculture were offered on a purely voluntary basis. Thus, we must carefully examine the implementation of these goals to make sure that their application to individual operations is fair and equitable. As I will explain, the nature and type of farming in North Carolina deserves special consideration.

I. Background

Mr. Chairman, farmers in North Carolina will face special problems when it comes to complying with the conservation provisions of the 1985 farm bill. North Carolina is a State of many small farms. We have more farms in absolute numbers than the State of Texas, and at a fraction of its size. Many of our counties are poor and have never had the resources to do soil mapping, so farmers in these areas are handicapped in complying with the new conservation requirements. Because of the shortage of local resources, many counties have only one soil conservationist and from time to time counties have to share conservationists. More than seventy-five percent of the farms in the western two-thirds of our State fall within the highly erodible category.

Our major crops (tobacco, soybeans, cotton, and peanuts) are all clean cultivation crops, which present special conservation problems, especially when these crops are produced on erodible land. An unusually high number of the landlords of our very small farms are older citizens with limited or no outside income to fund the conservation practices required by conservation plans. Since our farmers have so many landlords, the farmer and his landlords run significant risks that the producer will not be able to bring into compliance one small farm in a large overall operation, and thus deprive the entire operation of Federal benefits. In addition, there is no way the landlord can determine for himself the state of compliance on the many small farms in order to protect himself from the negligence of his operator or the recalcitrance of a fellow landlord.

II. Sodbuster

Generally, sodbuster subjects farmers, who bring highly erodible land into production, to the loss of farm program benefits. There are exceptions for lands that were used to produce crops during 1981 through 1985, and for farming conducted under an approved conservation plan.

On its face this is a reasonable requirement. However, in North Carolina, especially for tobacco growers, the implementation of the sodbuster provision may cause difficulties. This is because cropping history is not readily available; crop rotation

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and ASCS requirements demand relatively large areas of cleared land; there are soil types in North Carolina that by definition are highly erodible; Soil Conservation Service manpower resources are in short supply; and money to implement new conservation plans is not readily available.

(1) Cropping History

Records of cropping history for any farms in North Carolina are simply not available. One major reason for this problem was that non-quota crops were not required to be reported to ASCS. The lease and transfer of tobacco poundage-quotas, which was a common practice until last year, exacerbates this problem. Under prior law, poundage-quota could be leased from any farm and then produced on a different farm. Under current law a producer must actually farm the land to which the tobacco quota is attached. Thus, "new" land will now need to be broken out. Some of these acres will be on highly erodible land, and sodbuster may become applicable. But because of the lack of cropping history it will be difficult to prove that the cropping exception to sodbuster is available.

(2) Crop rotation and ASCS cleared land requirements

Under current practices, tobacco is rotated onto different fields at least every two years. In some cases, depending on soil types, this practice may include a 3 or 4 year rotation. This is because the production of tobacco naturally depletes certain elements from the soil, and clean soil cultivation results

in less vegetative residue being returned to the soil at the end of the crop year. These factors act to require a rotation period for recharging. Tobacco rotation practices thus require the use of large parts of farms in North Carolina. One must understand that these farms are not large. Few farms are larger than 100 acres. If there is any highly erodible land on the farm, sodbuster will likely restrict the management options of the producers. And, according to witnesses at our public meeting, this will result in the production of a lower quality tobacco. In addition, the Agricultural Stabilization and Conservation Service requires that tobacco farms include 2 acres of cleared land for every acre used for tobacco production. This 2 for 1 requirement, acting with the sodbuster limitations, and the rotation needs of the tobacco crop, could force many farmers to terminate tobacco production or clear additional, sometimes poor quality, land.

(3) Soil types

North Carolina includes areas with soil types that are by definition highly erodible. The production of a "clean soil" crop like tobacco on these soils will not be possible, absent an approved conservation plan. While these are the lands that Congress intended be taken out of production, the nature of the tobacco acreage-poundage quota system will cause some unintended harsh results. The cost of complying with an approved conserva-

tion plan--to allow continued production on these acres--will likely be prohibitive.

(4) Cost of compliance

This problem is not unique to North Carolina, but because of the special circumstances of tobacco farming it may be especially difficult for owners and operators to find capital to pay for new conservation plans. Many tobacco allotment holders are elderly and simply do not have money to invest in the needed improvements. Thus the operator becomes responsible for his farming practices and will be forced to pay for the plan. However, many operators farm 10 or more different farms in different areas of the same county, or in different counties. The burdens on the farm operator will be substantial: First, he must find the cropping history for each of the farms, then, if necessary, he must create and implement an approved conservation plan for each farm. Compounding the problem is the economic reality that operators have little incentive to pay for new conservation practices on a farm that may well be leased to a different farmer in the next year.

(5) Soil Conservation Service resources.

Mr. Chairman, I am sure that you will hear about this problem from several of your witnesses today. The demand on the SCS to help farmers produce new conservation plans may reach a breaking point prior to the 1990 conservation compliance deadline. This problem will be especially severe in areas like North Caro-

lina that are composed of mostly small farms. Each farm will need its own conservation plan. In addition, a single large farm might have more than one operator and some farms may cross county or district lines, necessitating the farmer to deal with multiple offices. In working with multiple districts, the farmer will find varying levels of skill in the application of technical rules by the staff of the agency. There will be different interpretations of the same regulations, and different conservation committees will review the work-product.

Because of the shortage of personnel and the large number of farmers that will need assistance, group planning sessions are the only practical way to get the job done. However, the planning process is very complicated and many farmers lack the sophistication to work in large groups and understand all of the terminology, formulas, and technical requirements. Many farmers absolutely must have the personal attention of a one-on-one situation. The conservationist will also need to go on the land to see if existing practices are working. I believe the SCS should approve existing practices, if adequate, rather than promoting the use of new practices that may look good on paper, but prove to be difficult or expensive to implement. We will need to fully support the SCS in its efforts to help our farmers with the conservation requirements of current law.

III. Conservation Compliance

Generally, the conservation compliance provisions of the 1985 farm bill will, after 1990, subject farmers to the loss of program benefits when crops are produced on highly erodible fields, unless the production is made under an approved conservation plan.

Many of the comments that I have made about the difficulties faced by farmers in North Carolina with the sodbuster law also apply with respect to the conservation compliance provisions. Although cropping history will no longer be relevant, the rotation needs of tobacco will need to be considered in the drafting of the conservation plan. In addition, as discussed above, because tobacco is a clean soil crop, erosion prevention is especially difficult. There must also be consistency in the interpretation of the regulations from conservationist to conservationist or from district to district. However, while consistency is necessary for fairness, there is also a great need for flexibility in drawing up conservation plans so that the special characteristics of the land and the ability of the farmer can be taken into account. The plan must meet the needs of a particular farm.

As I noted earlier, it is truly anomalous that some of the rotation requirements now set out in regulations may actually require some farmers to bear the expense of clearing additional land which may be marginal or unproductive. If the farmer has to have a certain number of acres of crop land per acre of allot-

ment, he will have to clear that land or buy additional acreage. That is not an option for many farmers.

One of the purposes of this legislation was to remove from production unproductive and marginal crop land. I would hope that slavish compliance with formulas and rotation requirements would not serve the exact opposite purpose. We may risk removing productive land from cultivation simply because of the difficulty of complying with technical requirements.

IV. Swampbuster

With regard to swampbuster, I believe the existing statutory definition of "wetlands" may be too broad for North Carolina because it covers all hydric soils with the ability to grow hydrophytic vegetation. Artificial drainage and clearing may have made land very productive and without any conservation problems. However, even if it has been tended for decades, the land will still remain a form of wetland since it is composed of hydric soil and will in fact grow hydrophytic vegetation. Land which has been successfully drained should surely not be affected by the swampbuster program.

With regard to abandoned lands, the definition now says that land "is considered abandoned if woody species of plants appear in the field." Because of our fertile soils, abundant rainfall, and good growing seasons, it is not unusual for woody vegetation to appear after only one or two years. This regulation should be

changed so that before land is considered abandoned, a determination is made that the land owner intended to abandon the property, not simply that young woody plants are present.

V. Conclusion.

Mr. Chairman, I am not here to ask that this subcommittee rewrite the 1985 farm bill. Its intent and goals are far too valuable. However, I believe the Department and others that are interested in the implementation of these conservation programs need to be aware of the special circumstances that face the farmers of North Carolina. As you well know, farming in Georgia is not like farming in Kansas, or California, or Washington. The Department must carefully implement these programs to ensure that unintended hardships are minimized. Unless reason prevails in the implementation of these programs, we may save the land, but lose the farmer.

This concludes my statement. I am happy to respond to any questions that you may have. Again, thank you for allowing me to present this testimony today.

STATEMENT OF THE
NORTH CAROLINA FARM BUREAU FEDERATION
MARCH 24, 1988

Mr. Chairman,

I am John N. Parker, Assistant to the President of the North Carolina Farm Bureau Federation.

On behalf of the farmers of our state, I express appreciation to you for the opportunity to share a few of our concerns with Title XII of the Food Security Act of 1985.

Title XII consists of several Subtitles which prescribe actions to be undertaken by USDA agencies to ensure that government programs available to farm owners and operators do not encourage uses of land inconsistent with government conservation policy. Title XII also sets up the Conservation Reserve Program.

There are three (3) Subtitles of Title XII that place mandatory restrictions on farmers who wish to continue to receive farm program benefits such as price and income support payments, disaster payments, Federal Crop Insurance, Farmers Home Administration loans or guarantees, farm storage facility loans, crop storage payments and other USDA program benefits.

Farmers in our state are just now beginning to recognize the implications of the various Subtitles of Title XII and the economic impacts on their individual operations. Some of us who attempted to follow and be involved in the development of the Food Security Act tried to point out that the provisions of this Title were far-reaching and would have a major impact on farmers in North Carolina.

Our state is a state of small farmers who attempt to make a livelihood on small farms, acreage-wise, as contrasted against the size of farming operations in other sections of the country. Our state is either blessed or cursed, as the case may be, with three (3) distinct land areas which can be described as:

- (1) The Coastal Plains - relatively flat land fairly close to sea level;
- (2) The Piedmont area - gently rolling land which encompasses the middle one-third of our state from north to south;
- (3) The Mountain area - with its peaks and valleys.

Thus, every Subtitle of Title XII affects North Carolina.

obtain such determination? Is it the farmer who started to install tile drainage in the 1970's, but because of the farm economy has not yet been able to complete it but hopes to sometime in the future? What about the sale of a farm after September 17; how does that deadline and provision apply to a new owner?

These are a few of our concerns. While we do not believe the Congress is likely to repeal or make major changes in Title XII, we believe there is need for modification of the regulations, especially the definition of wetlands, which should encompass less land and be less likely to deny farm program benefits to innocent farmers.

Title XII is causing a great deal of confusion and frustration for farmers in North Carolina as well as other areas of this country. Just this past Saturday, March 19, Congressman Martin Lancaster of our 3rd District and Congressman David Price of our 4th District held a joint meeting in Raleigh to provide farmers the opportunity to express their individual concerns with provisions of the Conservation Title. Mr. Wilson Scaling, Chief of the Soil Conservation Service, was kind enough to give up his Saturday to come to Raleigh to participate in that meeting. Approximately seventy-five (75) farmers attended at the invitation of their Congressman. I assure you that if that meeting had been publicized, there would likely have been 750 in attendance.

In conclusion, Mr. Chairman, we are concerned that many normal law-abiding farmers who are good stewards of our natural resources are about to become law breakers; to be labeled as Sodbusters, Swampbusters or Compliance-busters. We do not believe that to have been the intent of Congress.

Thank you.

Additional material submitted by the North Carolina Farm Bureau Federation, John N. Parker, Assistant to the President, follows:

The focus of today's discussion is on Subtitle C -- Wetland Conservation, better known in my country as "Swampbuster". Although it requires less than one page of print in PL 99-198, we are finding it to be a very powerful section of the Food Security Act.

Knowingly or unknowingly violating Section 1221 automatically disqualifies a farmer from eligibility for farm program benefits previously described. Reading the language in this Section in a casual manner would not indicate the severity of what it really means. Let me quote just a little of it:

"Except as provided in section 1222 and notwithstanding any other provision of law, following the date of enactment of this Act, any person who in any crop year produces an agricultural commodity on converted wetland shall be ineligible for ...";

and then it goes on to list for what such person shall be ineligible.

The definition of the word "wetland" becomes the key to the impact on the lives of farmers. Rather than take your time to review the definition as contained in the Federal Register, Vol. 51, No. 124, dated Friday, June 27, 1986, I have attached pages 23498-99 to this statement.

Mr. Chairman, that definition is rather complex. In my judgement, only specially trained people can fully comprehend and apply that definition to a farming situation. As a layman, I do not understand it or its application to the farm where I grew up. I believe that farmers in our state are about as literate as anywhere else in this country, but I do not believe they fully understand what is meant by "wetlands" in that definition.

Further, Mr. Chairman, we believe the definition encompasses much more land than was intended by the Congress. We believe it was the intent of Congress to get at the large scale land clearing and draining of low lands or so-called wetlands that was occurring during the Golden Years of the 1970's. Economic conditions in production agriculture of the 1980's have brought large scale land clearing in the Coastal Plains area of our state to a screeching halt.

Our major concern about the Swampbuster provision is for that farmer who may get kicked into the compliance feature by way of innocently draining a pothole in a field or squaring up a field in an area that would fall under the wetland definition. Such violations could become numerous in our state.

Finally, Mr. Chairman, and I could talk about the Conservation Compliance and Sodbuster provisions for a considerable period, the regulations require farmers to obtain a "commencement determination" by September 17, 1988. Who must

determination of predominance with respect to each field on the farm that contains highly erodible soils. If the criterion to determine the predominance of highly erodible land is set too high, a large amount of highly erodible land would be excluded from the provisions of the Act. If the criterion are set too low, too much land that is not highly erodible will be covered by the provisions of the Act.

Section 1222 (a) of the interim rule provides that fields containing 33.33 percent or more of the total field acreage identified as soils that are highly erodible shall be determined to be predominantly highly erodible. Generally, this highly erodible area produces most of the erosion that occurs on the field and constitutes a predominant factor limiting production on that field.

Further, § 1222 (a) of the interim rule provides that any field shall be determined to contain a predominance of highly erodible land if the field contains 50 or more acres of highly erodible land. The Department is concerned that large fields of cropland that contain sizeable amounts of highly erodible lands would not be determined to be highly erodible through the application of the 33.33 percent criterion. For example, if 1000 acres were broken out or continued to be used for cropland under the 33.33 percent criterion, slightly more than 330 acres could be highly erodible without the field being classified as a highly erodible field. Cultivation on such large amounts of highly erodible land without adequate conservation treatment is not consistent with the intent of the Act. The Department, upon request, will assist producers in structuring field boundaries so that highly erodible areas are not included in such fields.

The criteria for determining whether a field is predominantly highly erodible are not the same as the criteria used for the CRP. Two-thirds of a field must be highly erodible in order for such field to be eligible to be placed in the CRP. Again, the two-thirds criterion under the CRP is intended to ensure that the most highly erodible fields are included in the CRP. This maximizes the beneficial impact on erosion reduction and allows the Department to place more highly erodible land into the CRP per dollar expended than lower criteria would allow.

(3) Definition of Wetland

Section 1201(a)(16) of the Act defines wetland as land that has a predominance of hydric soil and that is inundated or saturated by surface or groundwater at a frequency and

duration sufficient to support and under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions. Therefore, in order for an area to be a wetland, such area must, under normal circumstances, contain both a predominance of hydric soils and a prevalence of hydrophytic vegetation.

Section 12.05(a)(13) of the interim rule adopts the statutory definition of hydric soil: Soil that in its undrained condition is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. Section 1201(b) of the Act provides that the Secretary shall develop criteria for the identification of hydric soils and shall develop a list of such hydric soils. It has been determined that the criteria to be used in the identification of hydric soils and in the development of the list of such soils shall be the criteria and soils set forth in the publication "Hydric Soils of the United States 1985." This publication was developed by the National Technical Committee for Hydric Soils, chaired by SCS, and is currently used by several agencies in defining wetland. The list of hydric soils and their criteria are the products of over 5 years effort of the Committee which is composed of an interagency team of soil scientists. The criteria used to develop the list are consistent with the criteria contained in the statutory definition.

The determination of the predominance of hydric soil in a given area shall be based on the occurrence of hydric soils in a soil map unit. A soil map unit may have a hydric soil as a major component (which would be indicated by that unit having a hydric soil as part of the name of the soil map unit) or as an inclusion or minor part of the soil map unit. A soil map unit may also be named for a miscellaneous area that meets hydric soil water table, ponding, or flooding criteria such as riverwash, playon, benches, or water.

The predominance test is a method of identifying soil map units that have components or inclusions of hydric soils or miscellaneous areas that meet hydric soil water table, ponding, or flooding criteria. This test of predominance was chosen because other alternatives considered do not protect significant wetlands such as potholes, or other areas meeting hydric soil criteria.

Section 1201(a)(9) of the Act defines hydrophytic vegetation as a plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The Act

provides that the Secretary shall develop criteria for the identification of hydrophytic vegetation and shall develop a list of such vegetation.

Section 12.01 of the interim rule provides that the "National List of Plant Species that Occur in Wetlands" (the "National List") which was developed by the National Wetland Plant List Review Panel shall be used for the identification of hydrophytic vegetation. The National List and its classification of plant species into indicator groups based on their preference for wetland conditions is currently used in wetland determinations by a number of agencies. The National List was established through the use of definitions of hydrophytic vegetation which are consistent with the definition contained in the Act.

As stated above, in order for an area to be a wetland, such area must, under normal circumstances, contain a prevalence of hydrophytic vegetation. Section 12.01(b) of the interim rule provides for the use of a sample of the frequency of occurrence for all plants within the plant community in an area, identified by indicator groups, to arrive at a weighted average value for the purpose of determining whether or not a prevalence of hydrophytic vegetation exists in the area. In the event the vegetation on an area has been altered prior to an on-site evaluation, prevalence of hydrophytic vegetation will be determined based upon the hydrophytic vegetation which typically exists on the same hydric soil map unit in the local area.

The Department considered a number of methods to determine prevalence of hydrophytic vegetation within a plant community. The chosen evaluation process is primarily based upon research conducted by the Fish and Wildlife Service, U.S. Department of the Interior, and researchers at North Carolina State University. The weighted average method has been selected to determine prevalence because it is relatively simple to perform, is as accurate as other methods, and is objective.

The Department will review the use of the weighted average test and other methodologies to determine a prevalence of hydrophytic vegetation.

The Department intends to provide SCS handbook guidance to SCS field office personnel in order to ensure that office determinations regarding the identification of wetland are made based upon the best possible information. SCS intends to instruct its field office personnel to use, in addition to soil survey maps, other available

natural resource information such as National Wetland Inventory Maps and ASCS aerial photographs when making wetland determinations. SCS intends to provide in its handbook that the district conservationist will review office determinations and make on-site determinations as to whether an area meets wetland criteria if: (1) Soil survey maps were not available to support the office determination; or (2) the information from the soil survey map conflicts with information from other sources such as National Wetland Inventory Maps or ASCS aerial photographs.

(4) Definition of Converted Wetland

Section 1201(a)(4) of the Act defines converted wetland as wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impeding or reducing the flow, circulation, or reach of water) for the purpose or to have the effect of making the production of an agricultural commodity possible if such production would not have been possible for such action, and before such action, such land was wetland and such land was neither highly erodible land nor highly erodible cropland.

Section 12.32(a) of the interim rule provides that a wetland shall be determined to have been drained, dredged, filled, leveled, or otherwise manipulated for the purpose or to have the effect of making the production of an agricultural commodity possible if (1) one or more of the hydric soils criteria of such wetland has been removed or (2) the hydrophytic vegetation on such wetland has been removed or destroyed.

The removal of one or more of the hydric soils criteria or the removal or destruction of hydrophytic vegetation removes one or more of the criteria that characterizes an area as wetland. The removal of one or more of the hydric soils criteria or the removal or destruction of hydrophytic vegetation is an objective measure of the effect an action has on a wetland. It is a good indication as to whether the action has been taken for the purpose or to have the effect of making the production of an agricultural commodity possible on such wetland.

It should be noted that an area cannot be determined to be a converted wetland unless such area was a wetland before the drainage activity occurred. Therefore, as stated earlier, in cases where the vegetation has been removed, modified, or destroyed, SCS will determine the prevalence of hydrophytic vegetation as it existed prior to the alteration based upon the occurrence of

such vegetation typically found on the same soil map unit in the local area.

The Act also provides that wetland shall not be considered converted wetland if production of an agricultural commodity on such land during a crop year is possible as a result of a natural condition, such as a drought, and is not assisted by an action of the producer that destroys natural wetland characteristics. Section 12.32(b) of the interim rule incorporates these provisions.

During the comment period for this interim rule, the Department will be conducting pilot testing regarding the effectiveness and practicality of the criteria and methodology for making determinations under the wetland conservation provisions of this interim rule. This testing process will be carried out in consultation with the Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers.

(5) Other Definitions

Section 1201(a)(1) of the Act defines an agricultural commodity as any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugarcane planted or produced in a State. Section 12.2(a)(1) of the interim rule adopts this definition.

Section 12.2(a)(19) of the interim rule defines the term "person" to mean an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof and such person's affiliates. Section 12.11 of the interim rule specifies which persons shall be considered to be affiliated for the purposes of this interim rule.

For purposes of the provisions of this interim rule it has been determined that an agricultural commodity shall be considered to have been "produced" on highly erodible land or converted wetland if the agricultural commodity has been planted. The Department recognized that considerable damage to such lands occurs at the time of planting with the breaking of the land.

Section 12.3(a)(20) of the rule defines a "producer" as a person who, as owner, landlord, tenant or sharecropper, is entitled to share in the crops available for marketing from the farm or in the proceeds thereof. This definition is consistent with the definition for a "producer" as set forth in 7 CFR 719.2(i).

Section 1201(a)(5) of the Act provides that a field shall have the same definition as it is defined in 7 CFR 719.2(b)(9). 7 CFR 719.2(b)(9) defines a

field as a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, croplines in cases where farming practices make it probable that such croplines is not subject to change, or other similar features. Accordingly, § 12.2(a)(11) of the interim rule adopts this definition.

(6) Farmers Home Administration Loans

Sections 1211(1)(E) and 1221(1)(E) of the Act provide that a person shall not be eligible for any loans made, insured, or guaranteed under any provisions of law administered by the FmHA if the Secretary determines that the proceeds of such loans will be used for either a purpose that will contribute to excessive erosion of highly erodible land or a purpose that will contribute to conversion of a wetland for agricultural production. FmHA has amended its regulations by adding Exhibit M and has made other conforming changes to its Farmer Program loan making regulations for the purpose of implementing the requirements of the Act. The amendments make it clear that an applicant will not be eligible for a Farm Operating Loan, Farm Ownership Loan, Emergency Loan, or Soil and Water Loan if FmHA determines that the proceeds of such insured or guaranteed loan will be used for either a purpose that will contribute to excessive erosion of highly erodible land or a purpose that will contribute to conversion of a wetland for agricultural production.

(7) Federal Crop Insurance

In accordance with the provisions of this interim rule, FCIC shall deny crop insurance to persons who produce an agricultural commodity on highly erodible land or converted wetland. Regulations governing the eligibility of a producer to obtain crop insurance shall be amended to conform to the provisions of this rule. FCIC shall require producers participating in the crop insurance program to provide a certification to FCIC as required in § 12.7 of the interim rule. All direct marketing insurance companies under contract with FCIC, reinsured companies, and current insureds shall be required to comply with the provisions of this rule. Because insurance policies are in effect and liability already assumed for the 1986 crop year, FCIC will require compliance with the provisions of this rule beginning with the 1987 crop year.

TABLE 2.

HIGHLY ERODIBLE LAND IN THE UNITED STATES (EXCLUDING ALASKA)

Source: SCS 1982 National Resources Inventory

STATE	HIGHLY ERODIBLE CROPLAND	HIGHLY ERODIBLE AGRICULTURAL LAND WITH POTENTIAL FOR CONVERSION TO CROPLAND
Alabama	1,406,800	6,150,400
Arizona	1,103,500	5,237,900
Arkansas	724,600	6,719,900
California	756,400	4,493,700
Colorado	6,124,800	8,019,100
Connecticut	69,900	373,800
Delaware	22,600	85,900
Florida	202,500	860,700
Georgia	1,083,100	5,632,800
Hawaii	130,600	460,800
Idaho	2,649,500	2,258,000
Illinois	4,108,800	2,229,300
Indiana	2,203,200	1,836,300
Iowa	8,214,800	2,704,300
Kansas	10,594,600	5,665,200
Kentucky	3,140,800	4,501,100
Louisiana	288,100	4,072,400
Maine	248,800	4,891,300
Maryland	641,500	981,900
Massachusetts	101,200	405,900
Michigan	617,800	1,902,400
Minnesota	1,636,100	1,721,700
Mississippi	1,786,100	3,443,600
Missouri	6,298,900	8,161,900
Montana	9,558,100	12,524,500
Nebraska	6,632,200	12,853,500
Nevada	75,900	759,000
New Hampshire	35,100	792,500
New Jersey	214,400	292,500
New Mexico	1,593,000	5,879,100
New York	1,994,300	4,793,900
North Carolina	1,717,200	5,527,000
North Dakota	2,271,500	3,317,500
Ohio	2,347,700	3,064,800
Oklahoma	4,699,200	9,368,700
Oregon	969,000	3,158,100
Pennsylvania	3,780,800	4,829,300
Puerto Rico	256,800	259,000
Rhode Island	3,900	123,600
South Carolina	469,700	2,388,000
South Dakota	1,703,400	6,383,100
Tennessee	2,513,100	6,001,900
Texas	13,903,000	35,589,100
Utah	615,000	1,077,600
Vermont	196,100	1,166,600
Virginia	1,612,900	5,813,200
Washington	2,396,100	3,649,100
West Virginia	605,900	3,202,800
Wisconsin	3,421,800	3,179,000
Wyoming	174,500	6,943,300
TOTAL	117,915,600	225,747,000

TABLE 3.

WETLANDS IN THE UNITED STATES (EXCLUDING ALASKA)

Source: SCS 1982 National Resources Inventory

STATE	TOTAL ACRES	WETLANDS WITH MEDIUM OR HIGH POTENTIAL FOR CONVERSION TO CROPLAND
Alabama	3,783,800	400,900
Arizona	134,900	23,500
Arkansas	1,323,400	121,500
California	1,380,500	102,400
Colorado	484,600	22,400
Connecticut	317,200	12,000
Delaware	236,800	83,700
Florida	7,727,500	535,400
Georgia	4,898,200	173,100
Hawaii	66,600	(not available)
Idaho	432,900	57,100
Illinois	822,600	103,400
Indiana	221,400	45,000
Iowa	125,800	27,300
Kansas	28,200	1,200
Kentucky	318,400	74,600
Louisiana	6,068,200	144,300
Maine	1,899,900	18,100
Maryland	935,700	68,200
Massachusetts	485,700	12,100
Michigan	3,960,800	224,600
Minnesota	7,723,200	393,900
Mississippi	2,839,600	279,100
Missouri	116,100	27,300
Montana	774,900	68,500
Nebraska	759,000	156,300
Nevada	82,300	6,900
New Hampshire	226,900	1,600
New Jersey	544,700	8,000
New Mexico	64,100	2,700
New York	2,298,000	170,800
North Carolina	2,874,000	278,100
North Dakota	2,896,100	298,200
Ohio	826,200	169,300
Oklahoma	140,500	22,500
Oregon	752,600	117,500
Pennsylvania	651,500	90,800
Puerto Rico	38,000	(not available)
Rhode Island	81,600	400
South Carolina	3,941,500	179,000
South Dakota	1,531,100	98,000
Tennessee	751,400	157,700
Texas	2,799,100	101,200
Utah	1,092,400	11,100
Vermont	182,800	3,100
Virginia	1,269,800	51,100
Washington	436,800	99,500
West Virginia	31,800	5,300
Wisconsin	4,494,800	122,600
Wyoming	263,300	12,400
TOTAL	76,187,200	5,184,300

Senator FOWLER. Thank you, Congressman Lancaster, very much. Very comprehensive, thorough statement. Any questions of our friend from North Carolina?

Mr. LANCASTER. Thank you.

Senator FOWLER. We will put the entire statement in the record, plus the prepared statement from the North Carolina Farm Bureau Federation.

Mr. LANCASTER. Thank you Mr. Chairman, and members of the committee.

Senator HEFLIN. I think I would like to suggest you send a copy of that to the Department.

Mr. LANCASTER. You may rest assured that I will do so, Mr. Heflin.

Senator FOWLER. Thank you very much, Martin.

Senator KARNES. Mr. Chairman, if I could interrupt.

Senator FOWLER. Yes, Senator Karnes.

**STATEMENT OF HON. DAVID K. KARNES, A U.S. SENATOR FROM
NEBRASKA**

Senator KARNES. The course of events here, I would like to just submit a short statement if I could and I appreciate sincerely the efforts of the subcommittee in holding this hearing. It is a critical issue in my State as well.

As a farmer myself, I have a steady flow of farmers on the phone, or as I travel the State, commenting about the difficulties and the confusion surrounding this proposal. In fact, how the Department implements the conservation provisions of the Food Security Act of 1985 is, in my mind, the most discussed item of conversation among farmers in the State of Nebraska, presently.

In fact, just last Monday, I gave a presentation in West Point, Nebraska, a town of approximately 3,500 people, and I was handed this petition which reflects the concerns of farmers, 485 farmers in 15 counties in Nebraska, about their ability to comply with the terms of the agreement and the plans provisions. This is a very typical situation as I travel around the State.

I have met on several occasions with Wilson Scaling, Chief of the Soil Conservation Service, and with Ron Hendricks, our own Nebraska State Conservationist, seeking ways that the Department of Agriculture could better work with farmers in my State to implement the plans in the compliance provisions. As I mentioned, there is great confusion and many people, including myself, believe that this is a very complex issue.

Mr. Chairman, I believe that farmers want to be the best stewards of their soil because the soil is their greatest asset. What they need is good advice on what practices are available to them in order to comply. The Soil Conservation Service needs to be proactive in its efforts to reach farmers with the information necessary to allow them to continue to receive Federal farm program payments.

As I understand the 1985 farm bill, those farmers with highly erodible acres on at least one-third of their base acreage must have conservation plans, that reduce erosion, approved by 1990, and to have made any needed changes and field alterations made by 1995.

The goal is to reduce erosion to about 5 tons per acre per year. I would urge the Department to demonstrate maximum flexibility in working toward these goals. The farmer should not be burdened with expensive field changes that could also then necessitate expensive machinery purchases.

Many farmers, particularly in the northeastern part of Nebraska, have indicated to me that the cost of compliance would more than double the cost of their original purchase of the ground or the appraised value of their ground. That is a great concern. There is much low-cost technology that exists that can also serve to reduce soil erosion, such as no till and ridge till techniques which we have used on our farm.

Other portions of the conservation provisions also need to be looked at very closely. The provision that denies farmers any program benefits as a result of cultivating a wetland may be too harsh. There should be a series of escalating penalties designed to reduce the level of the infraction rather than an absolute prohibition of benefits. There are disturbing reports of farmers making honest mistakes, yet they face a complete cut-off of program benefits because of the confusion.

Mr. Chairman, I urge the Department to act humanely with greater appreciation for the complexity of these provisions and to implement, with great care, these conservation provisions. Farmers are indeed conservationists because the greatest asset is the productivity of their soils. If given reasonable program application, I sincerely believe that all sides will benefit, farmers as well as American agriculture and the conservationists that are so concerned about the future of this great asset to our country, our soils.

Thank you again, Mr. Chairman, for holding these hearings and if there is any further help that I can provide from the perspective of a Nebraska Corn Husker farmer, please let me know.

Senator FOWLER. Thank you very, very much. We will now have our first panel this morning. We welcome Mr. Wilson Scaling, Chief of the Soil Conservation Service of the Department of Agriculture; Ms. Linda Fisher, the Assistant Administrator of the Environmental Protection Agency; Mr. Ronald Lambertson, the Assistant Director of the Fish and Wildlife Service; and Mr. Milton Hertz the Administrator of the ASCS in the Department of Agriculture.

Senator BOSCHWITZ. Mr. Chairman, may I ask my friend from North Dakota whether or not he has talked about the bill that we have introduced in an opening statement?

Senator CONRAD, have you talked about, I think its S. 2143, the bill that we have offered, did you make an opening statement regarding that?

Senator CONRAD. No. I have got an opening statement and in the interest of time, with the number of witnesses, I did not make it. I just made some observations about the swampbuster situation. So I have not yet raised the issue. I thought we would wait until you arrived.

Senator BOSCHWITZ. I understand. I am sorry I was late Mr. Chairman. But I would associate myself with the remarks that the Senator from North Dakota has made. I have introduced a bill, in which he and Senator Burdick have joined, that would allow lands

that are not erodible to be enrolled in the CRP. And I also have a longer statement that I will put in the record about that.

Senator FOWLER. Thank you. We will include your statement, Mr. Boschwitz, that of Senator Conrad and Senator Heflin, all will be made a part of the record and comments from Senator Bumpers, and I thank you.

[The prepared statements of Senators Heflin, Conrad, Boschwitz, and Bumpers follow:]

CONSERVATION HEARING
SUBCOMMITTEE ON CONSERVATION AND FORESTRY
SPEECH OF SENATOR HOWELL HEFLIN

MR. CHAIRMAN,

I WOULD FIRST LIKE TO COMMEND YOU FOR HOLDING THIS HEARING TODAY ON THE CONSERVATION PROVISIONS OF THE 1985 FARM BILL. I WOULD ALSO LIKE TO WELCOME SENATOR NUNN TO THE SUBCOMMITTEE, AND TO THANK HIM FOR HIS INTEREST AND HARD WORK IN THE AREA OF CONSERVATION AND FORESTRY. BOTH SENATORS FROM GEORGIA HAVE WELL-REPRESENTED THE INTERESTS AND CONCERNS OF THEIR CONSTITUENTS IN THIS FIELD, AS WELL AS THE INTERESTS OF PEOPLE THROUGHOUT OUR COUNTRY. IT IS ALWAYS A PLEASURE TO WORK WITH THEM AND TO HAVE THE BENEFITS OF THEIR EXPERTISE IN THESE MATTERS.

MANY OF THE PROVISIONS OF THE FOOD SECURITY ACT OF 1985 RELATIVE TO CONSERVATION HAVE WORKED WELL IN PROTECTING OUR NATIONS MOST VALUABLE RESOURCES -- OUR SOILS, FORESTS, AND WETLANDS. I BELIEVE THAT TODAY'S HEARING IS IMPORTANT IN REVIEWING THE ACTIONS OF THE DEPARTMENT OF AGRICULTURE IN THE IMPLEMENTATION OF THESE CONSERVATION PROVISIONS. I LOOK FORWARD TO THE TESTIMONY WHICH WILL BE GIVEN AND FEEL THAT THE

RECORD WHICH WILL BE COMPILED WILL PRESENT AN ACCURATE PICTURE OF THE WORKINGS OF THESE CONSERVATION PROVISIONS.

FURTHERMORE, AS WE APPROACH THE YEAR 1990, WHEN THE CONGRESS WILL HAVE TO PASS A NEW FARM BILL, WE WILL BE ABLE TO USE THE INFORMATION COMPILED IN THIS IMPORTANT HEARING TO FORMULATE MORE SUCCESSFUL, MORE RESPONSIVE CONSERVATION PROVISIONS FOR THE FUTURE.

THANK YOU, MR. CHAIRMAN

PREPARED OPENING STATEMENT OF SENATOR KENT CONRAD,

A U.S. SENATOR FROM NORTH DAKOTA

I am pleased to be co-chairing this hearing on the conservation provisions of the Food Security Act of 1985. In this law, the Congress correctly realized the need for giving farmers strong incentives to conserve the nation's natural resources. Next year this committee will begin to consider long-term legislation to succeed the 1985 Act, and it is important that we know how these programs are working--if they are successful in protecting our natural resources and if they are successful in treating farmers fairly.

Agriculture, both in my state and throughout the grain producing states, is just emerging from a serious recession. But in spite of the many prognostications of farm recovery, grain farmers received less out of the market in 1987 than in any time over the last 25 years. At the same time, government payments have reached record levels. But, in spite of the record government payments, the American consumer pays a smaller percent of his consumption dollar for food (including the cost of the farm program) than in any other country in the world. While this is a boon for consumers, it places great pressure on farmers. Now farmers are faced with a new pressure. I believe that most farmers would agree that preserving our natural resources is essential. The Food Security Act of 1985 gave us a reasonable program, but unfortunately it is being unreasonably applied. It is important that we use this tool fairly.

Because of the number of prairie wetlands in my state of North Dakota, I am especially concerned about the wetland protection aspect of the law--the so-called "swampbuster" provisions. A great deal of press attention has unfortunately--and incorrectly--created the impression that North Dakotans oppose the very concept of wetland preservation. That, quite simply, is not true, as public opinion polls have consistently demonstrated. But farmers in

my state, and in others that we will hear from today, do want assurance that swampbuster provisions will be applied in a reasonable fashion and in accordance with the Congress' intent.

Since the Department of Agriculture's publication of final swampbuster regulations, many farmers have expressed a number of concerns. One set of concerns has to do with the scope of land included in the law's definition of the term "wetlands." For example, temporary wet spots in an otherwise dry field, normally cultivated each year, are included in the definition of "wetlands." As such, these wet spots can not be altered in the future without the farmer losing all federal farm benefits. Another set of concerns has to do with small or inadvertent violations of the rules, such as a drainage activity that occurred prior to the rules' publication but has subsequently been determined to be illegal. Loss of all farm benefits, in the agricultural economic environment of 1988, is an extremely harsh penalty--particularly for an unintentional violation.

Perhaps even more upsetting than the specific regulations was the manner in which their implementation was attempted. Three separate agencies are involved in administering swampbuster--the Department of Agriculture's Soil Conservation Service and Agricultural Stabilization and Conservation Service, and the Department of the Interior's Fish and Wildlife Service. Unfortunately, information was not always consistent between these agencies. More importantly, USDA had not completed--in fact, has still not completed--the mapping of wetlands in North Dakota and other states. Farmers simply did not know how much of their land might be affected by the law--and neither did the government. This lack of factual information, combined with a genuine fear of the economic consequences of losing farm program benefits, created an atmosphere of confusion and outright suspicion.

I hope the hearing this morning will help resolve some of these concerns. A careful

review of the history of swampbuster provisions leads me to conclude that the regulations prepared by USDA do not in fact reflect the original intent of the Congress. Statements by Congressional sponsors, as well as those of witnesses from the environmental and wildlife communities, focused on the need for strong conservation provisions to discourage the future conversion of wetlands and highly erodible lands into cropland. The legislation that passed the House of Representatives in September 1985 reflected that very reasonable objective--it specifically exempted, from both the swampbuster and the erodible land provisions, any land that had been cultivated in any of the 1981 to 1985 crop years. There is sufficient evidence in the record to indicate that the Senate intended similar exemptions.

Finally, I would like to put in the record a brief synopsis of the legislative history of swampbuster legislation and information provided by the U.S. Fish and Wildlife Service concerning the waterfowl population in North Dakota. The data show that these populations fluctuate significantly from year to year. Nevertheless--and I don't know what may be happening in other states--according to the Service, I'm happy to report that the breeding population of ducks in North Dakota in 1987 was higher than it was 30 years ago.

I wish to thank my distinguished colleagues for their participation in this hearing, as well as all of our witnesses who have made the effort to be with us today. A competitive agricultural system and conservation of precious soil, water, and wildlife resources are not mutually exclusive goals. I believe today's hearing will reaffirm that both are desirable, and both are attainable.

5/1/88

STATEMENT
by
Senator Rudy Boschwitz
before the
Subcommittee on Conservation and Credit
Senate Committee on Agriculture Nutrition and Forestry
March 24, 1988

Mr. Chairman, I would like to commend you and the entire Subcommittee for holding this oversight hearing on the conservation provisions of the 1985 farm bill.

The conservation provision of that Act are recognized as being the first time Congress has addressed the environmental impact of agricultural production within the context of our Federal farm programs. Indeed, those provisions were really the first time farmers and their farm state members of Congress recognized, through the legislative process, the relationship between farming and the environment.

All of us are familiar with the Conservation Reserve Program, "sodbuster", "swampbuster," and conservation compliance provisions of the Act. Although we have experienced long-term set-aside programs in the past (the Soil Bank of the 1950's and 60's), the other provisions I just mentioned are unique. In light of their uniqueness, I must give USDA credit for administering the programs as well as they have. In fairness, there has not been as much controversy out in the countryside about these provisions as there would have been without the hard work of USDA personnel.

Part of the reason we are here today is because not all parties are happy with the original provisions, or with the implementation, of the farm bill conservation title.

One area of concern to many of my constituents in Minnesota is "swampbuster." Many producers have expressed concern that they will have their farming operations severely hampered by the so-called swampbuster laws, while other farmers and conservationists argue that swampbuster is not being adequately enforced. One well respected Minnesota conservationist/farmer testified that more drainage was taking place since passage of the farm bill.

To date, it has been difficult to discern what is "coffee shop" talk and what are the actual facts. In Minnesota, for example, there have been 15,000 wetland determinations made by the Soil Conservation Service. Out of those about 1,000 have been appealed at the county level. Four hundred have gone on to the area office; 45 of these to the state office; and 10 finally came all the way to Washington. These figures do not mean that the appeals were all settled to the liking of the producer, but it does indicate that things are being taken care of at the local and state level.

Nevertheless, I am concerned that wetland drainage may still be happening. There is little need to drain more acres for production of any crop. We already have an excess capacity of between 6 percent to 9 percent in crop agriculture.

The only possible reason to drain for production of crops is that our farm policies are not allowing the realities of market excess to reach the farmer. We learned about this in our hearing on the soybean situation last week.

As long as farm programs distort production signals, wetlands will be drained and marginal ground will be plowed.

Rather than impose even stricter controls on farmers as some environmentalists would probably like, or relax controls as some farmers would like, Senators Conrad, Burdick, and myself introduced what we think is a compromise that offers advantages to farmers and the environment alike.

In a nutshell, S.2143 offers incentives to preserve wetlands by taking them and their cropped uplands out of production. The Conservation Reserve program would be expanded to include not only highly erodible acres, but also upland acres associated with a wetland, as long as the wetland composes one-third of the cropped field.

Benefits of this plan include:

1) Producers who do not want to comply with swampbuster or believe that their personal property rights have been infringed upon will now be given the option of renting the property to society for the general good. This is consistent with the option given to farmers who have highly erodible ground and who do not want to comply with the farm bill conservation provisions.

2) Upland areas are critical as a filter for wetland water and as habitat for wildlife using the wetland as feeding, breeding, or resting areas. If such uplands could be put to conservation uses, rather than agricultural production, the value of the wetland for water quality and wildlife habitat would increase dramatically.

3) The current goal of entering 40 to 45 million acres in the CRP by the end of 1990 may be difficult to meet if the agricultural situation continues to improve. As prices rise, because of increased demand for commodities, and producers become more bullish about the future, they become less inclined to enroll their land for 10 years in conservation uses. On one hand, the bid price will have to go up in order to attract highly erodible acres; on the other hand, recent legislative changes approved by the Appropriations Committee say that CRP bids cannot exceed local rental rates for similar land in the area. USDA faces a catch-22 whereby farmers are bidding for higher payments, but the law requires lower payments in many areas.

Allowing wetlands to be enrolled in the CRP will expand the number of producers and acres that may participate. The Soil Conservation Service estimates that there are at least 10 million acres of cropped unconverted wetlands and 34 million acres of cropped converted wetlands. Such an expansion of eligibility will help ensure that the goal of entering 40 to 45 million acres in the CRP is reached more quickly and at less cost.

Mr. Chairman, I believe that the basic thrust of the conservation provisions of the 1985 farm bill were good. We need to do a better job of protecting our natural resources. To deny that protection on agricultural land is to deny the existence of environmental problems that result from agricultural production. Congress has really never imposed strict environmental regulations on farmers, as we have with other businesses. Now we have begun to require some conservation compliance on farms -- something many farmers do not like, but something that society is demanding as a prerequisite for continuation of farm subsidy programs.

I believe that farmers will face more and more stringent environmental regulations. This is because the easy sources of pollution have already been attacked. Congress has already passed environmental regulations for point-source pollution such as those from factories, waste-water plants, power plants, cars, and other sources which are easy to identify and control. When it comes to non-point source pollution -- like runoff and leaching from agricultural land -- the solution becomes more

difficult. However, Congress and society are beginning to address agricultural sources of environmental contamination.

It is the duty of those of us who represent farmers and farm states to make sure that new regulations and laws are reasonable, and that an appropriate transition time is allowed for farmers. S. 2143 is aimed at trying to make the "swampbuster" provision of the 1985 farm bill a little easier to live with.

I am convinced that the pain of regulation, not to mention the environmental damage caused by farming, could be reduced if we let market forces determine production of agricultural commodities. The "decoupling" bill offered by Senators Boren, Karnes and myself would go a long way towards reducing the intensive nature of farming in America.

I urge the timely consideration by the Agriculture Committee of our swampbuster bill (S. 2143) and the environmental consequences of decoupling.

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United States Senate

COMMITTEE ON SMALL BUSINESS
 WASHINGTON, DC 20510-8350

March 21, 1988

The Honorable Wyche Fowler
 Chairman
 Subcommittee on Conservation
 and Forestry
 Committee on Agriculture
 United States Senate
 Washington, D.C. 20510

Dear Wyche:

It is my understanding that you will soon be conducting a hearing on the conservation title of the Food Security Act of 1985. I would appreciate it if you would include my comments in the record.

I am concerned about recent attempts to erode the effectiveness of the swampbuster provision, in particular, attempts to exempt from inclusion prairie potholes and other wetlands that were farmed prior to December 23, 1985, but which have never been converted. It has long been the practice to farm these wetlands during the months that these lands have been dry, but the lands have not been converted so that they lose their characteristic as "hydric soils." Section 1201(a) of the 1985 Food Security Act clearly defines "converted wetlands" as land that has been drained, dredged, filled, leveled, or otherwise manipulated for the purpose or to have the effect of making the production of an agricultural commodity possible if (1) such production would not have been possible but for such action, and (2) before such action such land was wetland and was neither highly erodible land nor highly erodible cropland. This definition is determinative in the question as to whether or not prairie potholes and other farmed wetlands fall under the Wetland Conservation provision, better known as swampbuster, of Section 1221.

Section 1221 lists those agricultural entitlements and other programs that will be prohibited to producers if they convert wetlands. Section 1222 provides specific, clear exemptions, including the exemption for producers who converted wetlands if the conversion of such wetlands were commenced before December 23, 1985. Under no circumstances can this exemption be expanded through interpretation to include the unconverted prairie potholes and other wetlands, regardless of whether these lands have been farmed during the dry months. In fact, Section 1222 provides an exemption from swampbuster for producers who produce agricultural commodities on wetlands in a situation made possible by natural conditions, as long as the action does not destroy the natural wetland characteristics.

The sponsors and drafters of the swampbuster section and the conservation definition section were clearly cognizant of normal production practices in all wetlands areas. If the sponsors and drafters had wished to provide an exemption to remove prairie potholes and other farmed wetlands from swampbuster limitations, they could have done so. They specifically chose not to, and I can find no language or debate to the contrary that clouds this truth.

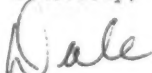
I am adamant in support of the swampbuster provision, in fact I would favor strengthening the provision, because of the dramatic and tragic losses to wildlife that would result from weakening this farsighted legislation. The prairie potholes are America's duck factories - the most important waterfowl production areas in America. The prairie pothole area comprises only 10% of the waterfowl breeding areas in the U.S., but it produces more than 50% of the continent's ducks. In fact, 87% of the ducks bred in the lower 48 states breed in the Dakotas, Montana, and Minnesota. In North Dakota, 93% of the ducks are bred on privately-owned lands.

The shallow potholes are vital to breeding because they thaw early in the spring, provide abundant food, and are dispersed enough to prevent the spreading of disease and to allow the claiming of territory. In fact, studies show that the number of potholes is more important than the size. Birds banded in North Dakota have been recovered in 46 states, 10 Canadian provinces and territories, and 23 other countries. Prairie potholes are also important to recharging groundwater aquifers, and provide some protection from flooding by storing excess water. To allow the destruction of the prairie potholes would be highly shortsighted.

I recognize that farmers in North Dakota and other prairie pothole and wetlands-prevalent states have a legitimate concern. However, I believe adjusting the Conservation Reserve Program, or crafting an analogous program, is a far more preferable option than pursuing the highly-questionable effort to cloud the legislative history surrounding the Wetlands Conservation provision.

Thank you for allowing me to share my thoughts on this important provision. I am very interested in your hearing, and I look forward to reviewing the hearing record.

Sincerely,



Dale Bumpers

DB:cc

Senator BOSCHWITZ. Mr. Chairman, I would say to you that we are marking up the INF Treaty and that is why Senator Lugar has left. So after a respectable period of time, I too will have to leave.

Senator FOWLER. I have your proxy and I will cherish it.

Senator BOSCHWITZ. Wow, that's risky giving you my proxy, I will tell you.

Senator FOWLER. I will ask the panel to try to adhere to the limits, that we never can adhere to ourselves, on time limitation of approximately 5 minutes, so that we will have a chance for some questions and discussions with you. Is there any natural order to things or will we just go in the order that they were called. Mr. Scaling.

STATEMENT OF WILSON G. SCALING, CHIEF, SOIL CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY GALEN S. BRIDGE, SCS, DEPUTY CHIEF FOR PROGRAMS

Mr. SCALING. Thank you, Senator.

Mr. Chairman and members of the committee, I am happy to be here today to review the Soil Conservation Service activities under the conservation title of the Food Security Act of 1985 [FSA]. I am going to summarize these and then a member of my staff, Mr. Bridge, and I, will be happy to answer any questions that you might have. We will limit our discussion today to those activities associated with highly erodible land and wetland conservation provisions.

RULEMAKING

As of February 11, 1988, all final rules were in place. Getting to this final rule stage took a lot of work. SCS and other USDA agencies went through more than 8,000 public comments on the interim rules issued in June 1986.

Many of those comments dealt with the level of erosion reduction farmers were expected to achieve under the highly erodible land provisions. This turned out to be such an important issue that I will explain briefly what transpired.

The interim rule we established in June 1986 required that conservation systems for highly erodible cropland had to reduce erosion down to the soil loss tolerance (T value) level or, in the case of hardship, to a level not exceeding 2T. T values have been determined for soils that SCS has surveyed. These values range from 1 to 5 tons of soil loss per acre per year.

Over the years since this T value was developed, we have used it as a guide for developing conservation systems for farmers and ranchers who have voluntarily come in for our technical assistance. The soil loss tolerance value has been a part of the SCS field office technical guides. However, the T value is not, however, a perfect tool.

Under the FSA conservation provisions, farmers who crop highly erodible land—and who want to keep their USDA benefits—have to develop conservation plans that comply with our technical guides. It is not the voluntary situation that we operated under for 50 years. Hundreds of public comments indicated that following a rigid national standard for erosion reduction would jeopardize agri-

business in some parts of the country. To achieve these levels of erosion reduction, many producers across the country would have to take large amounts of land out of production or incur excessively high capital investment costs to remain eligible for USDA farm program benefits. On June 29, 1987, therefore, we amended the interim rule to remove specific reference to the T or the 2T criteria. That change was finalized on February 11, 1988.

Our present procedure is to base FSA conservation systems on the SCS field office technical guide. The guide contains acceptable systems that are economically and technically feasible for the local area.

The conservation systems proposed for use in a local technical guide are reviewed by the local conservation district, ASCS County Committee, and other agricultural groups, and by SCS national technical centers. They are also approved by the SCS State conservationist. So, in effect, we are not surrendering technical quality. Those systems do achieve substantial reductions in erosion rates and, we believe, are consistent with the intent of the act.

I also want to make it clear that if a farmer already has a conservation system that meets our technical guide standards—whether or not it matches exactly the systems we have included in the technical guide—that too will be considered an acceptable conservation system.

The systems contained in the technical guides will provide substantial reductions in erosion on highly erodible cropland, and in many cases, will achieve nondegradation of the soil resource.

However, where native vegetation, such as range and woodland are broken out for agricultural commodity production, conservation systems are restricted to those that achieve the T value. This restriction will discourage conversion of our highly erodible native range and woodland to cropland, as Congress did intend.

We believe that using technical guide criteria, instead of rigid T values, is a reasonable and practical approach to reducing erosion on highly erodible cropland without placing unnecessary burdens on the Nation's farmers.

CONSERVATION PLANNING AND APPLICATION

Of the 120 million acres of highly erodible cropland subject to conservation compliance in this country, we expect that about 30 to 35 million acres will be bid into the Conservation Reserve Program. That leaves about 90 to 95 million acres needing conservation compliance plans, exclusive of the nonhighly erodible land that may be a part of the highly erodible fields. In all, we estimate that approximately 800,000 farmers will need to develop new conservation plans or certify compliance with existing plans on about 135 million acres by January 1, 1990. They will have to have adequate conservation systems applied to that land by January 1, 1995.

Our national tracking system enables us to check progress quarterly. It shows where we may be running into difficulty and where more help is needed. Our goal is to complete 90 percent of the highly erodible land determinations and 65 percent of the conservation plans by the end of calendar year 1988. As of December 31, 1987, we had determined about 80 percent of the highly erodible

land determinations and had completed better than 25 percent of the conservation plans.

We estimate that a conservation system for highly erodible land will cost between \$3 to \$14 per acre to install and maintain, on an annualized basis, depending upon the type of acceptable conservation system that is selected by the farmer. Usually, it will take these farmers the period of a complete crop rotation to realize all the benefits of the applied conservation system through improved soil moisture and tilth, better yields, less soil loss, and improved water quality.

To meet the FSA workload, SCS has been developing ways to increase efficiency in working with farmers and ranchers. Some gains are made by working with them in groups instead of individually. Sometimes, we can have farmers do some of the conservation planning work themselves, simply by reviewing their soil maps, checking soil erosion rates from charts, and preparing their own conservation plan maps. Conservation districts and local and State agencies, and the private sector, are also providing help. We are also getting many volunteers to help gather information and materials to prepare conservation plans. Through the use of computers and group conservation planning procedures, we anticipate that we will be able to improve our planning efficiency, even more, over this next year.

One unknown in our analysis is the degree to which farmers are willing to accept SCS recommendations for acceptable erosion control. As I said earlier during the last 50 years, SCS has worked effectively with those farmers, who voluntarily wanted to apply conservation measures on their lands. Now we are rapidly getting down to a group of farmers, who in the past have resisted, for various reasons, voluntary conservation efforts. This latter group may be much slower to adopt acceptable conservation systems.

[The prepared statement and responses to questions of Mr. Scaling follow:]

STATEMENT OF WILSON SCALING, CHIEF, SOIL CONSERVATION
SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Committee, I am happy to have this opportunity to review Soil Conservation Service activities under the Conservation Title of the Food Security Act of 1985 (FSA). First, I would like to summarize these activities, then my staff and I will be glad to answer any questions. My summary covers rulemaking activities, conservation planning and application, and our information and education effort.

RULEMAKING

SCS had a major role in developing the U.S. Department of Agriculture's (USDA) rules for implementing the Conservation Title of FSA. I will limit my discussion today to those activities associated with the Highly Erodible Land and Wetland Conservation provisions of the Act.

As of February 11, 1988, all final rules were in place. Getting to this final-rule stage took a lot of work. SCS and other USDA agencies went through more than 8,000 public comments on the interim rules issued in June of 1986.

Many of those comments dealt with the level of erosion reduction farmers were expected to achieve under the Highly Erodible Land provisions. This turned out to be such an important issue that I will explain briefly what transpired.

The interim rule we established in June 1986 required that conservation systems for highly erodible cropland had to reduce erosion down to the soil loss tolerance ("T" value) level or, in the case of hardship, to a level not exceeding 2T. T values have been determined for soils that SCS has surveyed. These values range from 1 to 5 tons of soil loss per acre per year.

Over the years since this T value was developed, we have used it as a guide for developing conservation systems for farmers and ranchers who have voluntarily come in for our technical assistance. The soil loss tolerance value has been a part of SCS field office technical guides. The T value is not, however, a perfect tool.

Under the FSA conservation provisions, farmers who crop highly erodible land...and who want to keep their USDA benefits...have to comply with our technical guides. It's not so voluntary a situation as we have been used to. Hundreds of public comments indicate that following a rigid national standard for erosion reduction would jeopardize agribusiness in some parts of the country. To achieve these levels of erosion reduction, many producers across the country would have to take large amounts of land out of production or incur excessively high capital investment costs to remain eligible for USDA program benefits. On June 29, 1987, therefore, we amended the interim rule to remove specific reference to the T or 2T criteria. That change was finalized on February 11, 1988.

Our present procedure is to base FSA conservation systems on the SCS field office technical guide. The guide contains acceptable systems that are economically and technically feasible for the local area.

The conservation systems proposed for use in a local technical guide are reviewed by the local conservation district and other agricultural groups...and by SCS national technical centers. They are also approved by the state conservationist. So, we are not surrendering technical quality. These systems do achieve substantial reductions in erosion rates and, we believe, are consistent with the intent of the Act.

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The systems contained in the technical guides will provide substantial reductions in erosion on highly erodible cropland...and in many cases will achieve nondegradation of the soil resource.

However, where native vegetation such as range and woodland are broken out for agricultural commodity production, conservation systems are restricted to those that achieve T value. This restriction will discourage conversion of our highly erodible native range and woodland to cropland, as Congress intended.

We believe that using technical guide criteria instead of rigid T values is a reasonable and practical approach to reducing erosion on highly erodible cropland without placing unnecessary burdens on the Nation's farmers.

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Of the 120 million acres of highly erodible cropland subject to conservation compliance in this country, we expect that about 30 to 35 million acres will be bid into the Conservation Reserve Program. That leaves about 90 to 95 million acres needing conservation compliance plans, exclusive of the non-highly erodible land that may be a part of the highly erodible fields. In all, we figure that approximately 800,000 farmers will need to develop new conservation plans or certify compliance with existing plans on about 135 million acres by January 1, 1990. They will have to have adequate conservation systems applied to that land by January 1, 1995.

Our national tracking system enables us to check progress quarterly. It shows where we may be running into difficulty and where more help is needed. Our goal is to complete 90 percent of the highly erodible land determinations and 65 percent of the conservation plans by the end of calendar year 1988. Here is our progress as of December 31, 1987:

Activity	No.	Acres	Pct. Tot. Estim. Workload Completed
Highly erodible land determinations.....	956,000	60.0M	80.0
Conservation plans completed.....	220,000	33.1M	25.0
Conservation systems applied.....	83,693	8.0M	7.0
Wetland determinations completed.....	49,736	1.9M	4.0

We estimate that a conservation system for highly erodible land will cost \$3 to \$14 per acre to install and maintain, on an annualized basis, depending upon the type of acceptable conservation system that is selected by the farmer. Usually, it will take these farmers the period of crop rotation to realize all the benefits of the applied conservation system through improved soil moisture and tilth, better yields, less soil loss, and improved water quality.

To meet the FSA workload, SCS has been developing ways to increase efficiency in working with farmers and ranchers. Some gains are made by working with them in groups instead of individually. Sometimes we can have farmers do some of the conservation planning work themselves — by reviewing their soil maps, checking soil erosion rates from charts, and preparing their own conservation plan maps. Conservation districts, other local and state agencies, and the private sector are providing help. We are also getting many volunteers to help gather information and materials to prepare conservation plans. Through the use of computers and group conservation planning procedures, we anticipate that we will be able to improve our planning efficiency, even more, over the next year.

One unknown in our analysis is the degree to which farmers are willing to accept SCS recommendations for acceptable erosion control. During the last 50 years, SCS has worked effectively with those farmers who voluntarily wanted to apply conservation measures on their lands. Now we are rapidly getting down to a group of farmers who in the past resisted, for various reasons, voluntary conservation efforts. This latter group may be much slower to adopt acceptable conservation systems.

Another example of how we are finding more efficient ways to service the FSA workload has to do with wetland identification. We have established several teams to expedite wetland determinations in the Red River Valley of North Dakota and Minnesota. This activity was completed just last week; and it has, we believe, resolved most of the concerns expressed by area landowners and others about the effect of swampbuster on farming operations in the area.

Because of these efforts, we believe that we have adequate resources to meet the 1990 deadline for completion of conservation plans, provided farmers do not delay in asking for their plans.

There is no doubt that FSA has had a significant impact on the workload of SCS. It is possible that, in some locations, work on other important conservation problems is being delayed or postponed. However, as you can see, we are doing everything possible to mitigate the impact of the FSA workload on other conservation programs.

INFORMATION AND EDUCATION

SCS is heavily involved in FSA information and education efforts nationwide. We have been a major participant in the USDA interagency Information and Education Task Force, which has seen to the production of numerous FSA fact sheets, displays, brochures, and audiovisual materials...which then are distributed through the state Food and Agriculture Councils.

This year, the SCS director of public information heads the task force.

At the state and local level, SCSers and conservation district people are using the Task Force materials and developing many education outreach ideas of their own. We are reaching farmers and ranchers — including absentee landowners — as well as agribusiness and financial organizations.

Extension Service Administrator Myron Johnsrud and I recently signed an agreement paving the way for closer cooperation in FSA information and education. It gives state conservationists new options for transferring funds to the state Cooperative Extension Services for producing information materials and helping out in group planning.

Overall, I believe that we have a good, coordinated interagency effort to implement the Food Security Act of 1985. SCS is proud to be a part of that effort. The Act provides us a unique opportunity to achieve substantial progress towards solving some of our most critical soil and water resource problems.

That concludes my prepared statement, Mr. Chairman. My staff and I will be glad to answer any questions. Here with me today is Galen Bridge, SCS Deputy Chief for Programs.

PATRICK J. LEAHY, MINNESOTA, CHAIRMAN

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United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510-6000

April 7, 1988

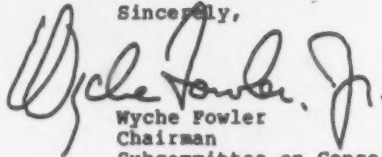
Mr. Wilson Scaling
Chief
Soil Conservation Service
U.S. Department of Agriculture
14th and Independence Street, S.W.
Washington, D.C. 20250

Dear Mr. Scaling:

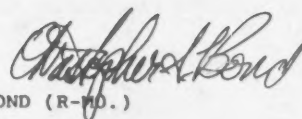
I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
Chairman
Subcommittee on Conservation and
Forestry



QUESTIONS SUBMITTED BY SENATOR CHRISTOPHER S. BOND (R-MO.)

Mr. Wilson Scaling

1. In your written statement, you indicate that SCS is fairly close to it's goal of 90 percent completion of highly erodible land determinations by the end of calendar year 1988. However, SCS is still 300,000 short of the 1988 goal of 520,000 approved conservation goals. Is this goal still feasible and how do you propose to meet it? Is the problem a shortage of technical assistance or are farmer's hesitating in requesting assistance? What can be done to encourage farmers to begin the process of developing conservation plans?
2. It is my understanding that 12.5 percent of the land idled under the CRP is supposed to be planted to trees. Although the national average is currently at 5 percent, Missouri has planted less than 2,000 acres of trees out of approximately 1.2 million acres enrolled. How do you account for this lack of interest? What can the Department do in order to encourage additional plantings on CRP acreage?
3. Has the Department considered some flexibility in the regulations regarding multicropping systems? For example, I have heard that current guidelines prohibit landowners from planting walnut trees on spacings wide enough to mow forage between the rows or use it for hay at the end of the 10-year CRP period.
4. Have any states taking advantage of the new agreement between the Extension Service and SCS? Do you anticipate much participation? What is the \$1 per acre of CRP land that goes back to the state used for?
5. If a farmer has a conservation system in place, who makes the determination of whether or not it is acceptable? If this decision somewhat subjective, how can we be assured of a consistent policy? Has SCS experienced any problems with this? Do you have any recommendations?

Additional Questions for WILSON SCALING, SCS
submitted by Senator Conrad

1. At the March 24 hearing, you first indicated to me that you did not believe that swampbuster rules reflected the actual intent of Congress, but later (apparently) contradicted that statement. Please explain the source of that apparent contradiction. Specifically, do you think that (1) the law as it finally passed does not reflect what Congress actually intended to do, or (2) the regulations do not reflect the intent of the law?
2. What is the status of wetland mapping in North Dakota? What percentage of the state has been mapped? What percentage nationwide has been mapped?
3. How many alleged violations of swampbuster rules have been reported to SCS? How many have been investigated by SCS? How many alleged violations has SCS referred to ASCS or other USDA agencies?
4. The National Wildlife Federation asserts that the SCS has provided them with information that at least 3000 landowners in Minnesota are in violation of swampbuster. Are you aware of the alleged 3000 violations in Minnesota? Can you explain the source of the Federation's information?

PATRICK J. LEAHY, VERMONT, CHAIRMAN

JOHN WELCHER, MONTANA
DAVID R. PRYOR, ARIZONA
DAVID L. BORER, OKLAHOMA
MYNELL FEFLIN, ALABAMA
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SEN. CONRAD, NORTH DAKOTA
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United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510-8000

March 30, 1988

Mr. Wilson Scaling
Chief
Soil Conservation Service
U.S. Department of Agriculture
Room 5105 South Building
14th and Independence, S.W.
Washington, D.C. 20250

Dear Mr. Scaling:

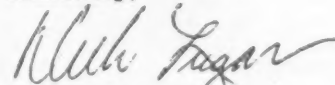
Please find enclosed a copy of the two questions I submitted for the record during the March 24 Conservation hearing chaired by Senator Conrad.

I would appreciate a response to these questions so that your reply may be made a part of the final record.

I appreciate you coming before the Committee to share your thoughts with us. I regret that I was unable to be there during your testimony, but be assured, I will carefully review the record. Please do not hesitate to contact me if you have any questions.

Thank you for your continued assistance.

Sincerely,



Richard G. Lugar
Ranking Minority Member

Enclosure

RGL/jd

CONTROL NO. 5-88-21

DATE
BY

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Questions for Wilson Scaling of SCS

Question 1

Mr. Scaling, I have a question regarding misinformation. As I understand it, if, for example, a farmer had asked SCS in January 1986 whether a field which had been in pasture for many years was or was not highly erodible, local SCS personnel told the farmer that the land was not highly erodible, the farmer planted the field to a commodity crop and then SCS redetermined that the field was indeed highly erodible, the farmer would not lose his benefits because he had relied on the initial SCS determination. Is that correct?

If so, if we look at the same fact situation that I just described except that the farmer wanted to install a new tile drain and had asked SCS if the field were a wetland, my understanding is that we would come to a different result.

My understanding is that reliance on misinformation from USDA regarding wetlands does not exempt the farmer from the penalties of the Conservation Title. As I understand it, the farmer would lose all of his USDA benefits even though he consulted USDA personnel and was given incorrect information.

Mr. Scaling, is there anything you can do to correct this situation?

Question 2

I have another question for Mr. Scaling. My understanding is that, once a farmer receives notice that some part of his farm contains wetlands, the farmer has 15 days to appeal that determination. Many farmers in my state have complained that the 15-day period is too short and that should a farmer neglect to appeal in that period, the farmer effectively is locked into that determination forever and may never drain that land even if he believes that SCS was incorrect in classifying that land as a wetland. Can you give me the justification for that 15-day period or is there some possibility that this period can be lengthened or reviewed at some later date?

ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD
TO THE SOIL CONSERVATION SERVICE

Hearing of the Subcommittee on Conservation and Forestry
On Oversight of Conservation Programs Administered by USDA
March 24, 1988

1. During the hearing, Mr. Scaling was asked about the backlog of requests for technical assistance in SCS field offices.

Please provide for the record an estimate, by state, of the number of producers who have requested but have not yet received assistance from SCS in developing a conservation plan for their highly erodible land.

Please also provide an estimate, by state, of the average length of delay between a producer's request for assistance in developing a plan and the time such assistance is provided by SCS.

2. Mr. Scaling's testimony referred to a Memorandum of Understanding between SCS and the Extension Service to increase cooperation in Food Security Act-related education and information efforts. The testimony indicates that state conservationists now have the authority to transfer funds to state Cooperative Extension Services to produce educational materials and to assist SCS in group planning.

Please indicate the contracts that have been entered into to date between state conservationists and state Cooperative Extension Services, the amount of funds transferred per contract to date, and the amount of funds likely to be transferred per contract in the future.

Please also indicate the states where such contracts are likely to be entered into during FY 1988, and an estimate of the amount of funds likely to be transferred per contract.



United States
Department of
Agriculture

Soil
Conservation
Service

P.O. Box 2890
Washington, D.C.
20013

April 29, 1988

Honorable Wyche Fowler
Chairman
Subcommittee on Conservation
and Forestry
Committee on Agriculture, Nutrition,
and Forestry
United States Senate
Washington, D.C. 20510-6000

Dear Mr. Chairman:

This is in response to your letter dated April 7, 1988. Enclosed are the requested answers to additional questions from Committee members.

If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

WILSON SCALING
Chief

Enclosures



The Soil Conservation Service
is an agency of the
Department of Agriculture

WO-AS-1
10-79

Questions submitted by Senator Christopher S. Bond

QUESTION 1:

In your written statement, you indicate that SCS is fairly close to it's goal of 90 percent completion of highly erodible land determinations by the end of calendar year 1988. However, SCS is still 300,000 short of the 1988 goal of 520,000 approved conservation goals. Is this goal still feasible and how do you propose to meet it? Is the problem a shortage of technical assistance or are farmer's hesitating in requesting assistance? What can be done to encourage farmers to begin the process of developing conservation plans?

ANSWER:

We believe that this goal is still feasible. We realize that we have a big job ahead of us, but are just now seeing the benefits of some of the efficiencies that we had projected. Approximately three-fourths of our offices are now automated and have the software to develop conservation plans and tract our progress. We are also starting to see the benefits of our efforts to develop conservation plans with groups of farmers rather than our traditional one on one approach.

Our field personnel have witnessed some reluctance on the part of farmers to proceed with the development of a conservation plan, but it doesn't appear to be a major problem at this time. We feel that a continued information and education effort on the need for farmers to complete their conservation plans on highly erodible land can go along way toward encouraging these farmers.

One thing that will encourage them as much as anything is continued indications by the Administration and Congress that these requirements will not go away and the deadline for planning and applicatuon will stay.

QUESTION 2:

It is my understanding that 12.5 percent of the land idled under the CRP is supposed to be planted to trees. Although the national average is currently at 5 percent, Missouri has planted less than 2,000 acres of trees out of approximately 1.2 million acres enrolled. How do you account for this lack of interest? What can the Department do in order to encourage additional plantings on CRP acreage?

ANSWER:

It is difficult to determine why tree planting under CRP is much higher in some states than others. It appears that, with the exception of the Southeastern United States where timber is the most marketable, producers have chosen to plant native or introduced species of grass to allow them more flexibility for use of their land after the contract expires. In addition, climatic and soil conditions may not be suitable for growing trees in some areas.

The Department is making a concerted effort to meet, to the extent practical, the goal established by Congress of having 12.5 percent of CRP acreage planted to trees. For example CRP criteria eligibility has been revised to allow more land to become eligible for CRP when land will be planted to trees. In addition, state conservation review groups in most states have developed a state plan to promote increased tree planting. The sixth CRP sign-up reflects the success of these efforts as nearly 536 thousand acres of the total 4.5 million bid, or about 8.4 percent, were for trees. This is a substantial increase in the percent of land bid for trees relative to other signups.

QUESTION 3:

Has the Department considered some flexibility in the regulations regarding multicropping systems? For example, I have heard that current guidelines prohibit landowners from planting walnut trees on spacings wide enough to mow forage between the rows or use it for hay at the end of the 10-year CRP period.

ANSWER:

The tree planting specifications, including spacings, ensure that adequate erosion control will be provided for the ten year life of the contract. The planting of nut trees for the purpose of future nut production is prohibited. However, nothing prevents the producer from changing the tree spacing after the contract expires if multicropping or nut production meets the producer's goal.

QUESTION 4:

Have any state taken advantage of the new agreement between the Extension Service and SCS? Do you anticipate much participation? What is the \$1 per acre of CRP land that goes back to the state used for?

ANSWER:

Yes, states are starting to take advantage of the new agreement between the Extension Service and SCS. This agreement provides for the development of a well coordinated information and education effort by SCS and the Cooperative Extension Service. In those cases where the Extension Service needs to accelerate their present effort and funds are available, SCS is providing some financial support. To date we have funded agreements in Utah, Kansas, Illinois, Indiana, Florida, Virginia and Montana. We anticipate that perhaps another 6-10 states will develop similar funding agreements.

The \$1 per acre CRP reimbursement to states is to help defer the additional costs associated with servicing the CRP workload. Some of these funds are also used to reimburse conservation districts if they provided additional resources to help service the workload beyond normal levels.

QUESTION 5:

If a farmer has a conservation system in place, who makes the determination of whether or not it is acceptable? If this decision is somewhat subjective, how can we be assured of a consistent policy? Has SCS experienced any problems with this? Do you have any recommendations?

ANSWER:

SCS determines whether existing conservation systems are acceptable. The local conservationist compares the conservation system applied on the farmers land with the requirements identified in the field office technical guide for the appropriate soil and climatic conditions. If the system applied matches the requirements or provides an equivalent level of treatment, the system is determined to be acceptable. We have had minimal problems associated with inconsistencies.

Additional Questions submitted by Senator Conrad

QUESTION 1:

At the March 24 hearing, you first indicated to me that you did not believe that swampbuster rules reflected the actual intent of Congress, but later (apparently) contradicted that statement. Please explain the source of that apparent contradiction. Specifically, do you think that (1) the law as it finally passed does not reflect what Congress actually intended to do, or (2) the regulations do not reflect the intent of the law?

ANSWER:

If I gave the impression that I did not believe that the swampbuster rules reflect the intent of Congress, it was inadvertent. I did not intend to give that impression. We in USDA have done our best to insure that the rules and regulations reflect the intent of Congress.

QUESTION 2:

What is the status of wetland mapping in North Dakota? What percentage of the state has been mapped? What percentage nationwide has been mapped?

ANSWER:

The Food Security Act wetland inventory has been completed for all of the Red River Valley counties in North Dakota and Minnesota. In addition to the six valley counties in North Dakota, 11 other Eastern counties in North Dakota have been completed or will be completed by next month.

Mapping has been completed for 15 of the 53 counties in North Dakota. The 15 counties mapped, plus the two counties presently being mapped are all in the eastern part of the state, where most of the wetlands are located. Approximately 30 percent of the wetlands in North Dakota have been mapped.

As of April 1, 1985 there were approximately 78,000 wetland determinations completed on about 5 percent of the farms nationwide that participate in USDA programs.

QUESTION 3:

How many alleged violations of swampbuster rules have been reported to SCS? How many have been investigated by SCS? How many alleged violations has SCS referred to ASCS or other USDA agencies that are referred to ASCS or other USDA agencies?

ANSWER:

SCS does not keep records on the number of alleged violations since SCS is not responsible for processing swampbuster violations. Swampbuster violations are to be reported to and processed by the Agricultural Stabilization and Conservation Service (ASCS).

None. SCS does not investigate violations.

SCS does not keep records on the number of alleged violations that are referred to ASCS or other USDA agencies. When SCS becomes aware of alleged violations, they are referred to ASCS. When other persons or agencies report alleged violations to SCS, we request that the person or agency report the alleged violations to ASCS.

QUESTION 4:

The National Wildlife Federation asserts that the SCS has provided them with information that at least 3,000 landowners in Minnesota are in violation of swampbuster. Are you aware of the alleged 3,000 violations in Minnesota? Can you explain the source of the federation's information?

ANSWER:

We are not aware of these violations nor has SCS reported 3,000 violations on wetlands in Minnesota since December 23, 1985. SCS has reported approximately 3000 farms that have altered drained or modified wetland since December 23, 1985. However, if alterations have been made, they are not necessarily violations in that the farmers may not have planted an agricultural commodity on the converted wetland. In some cases these conversions may have been commenced prior to the Act and are exempt.

The source is likely SCS's reporting system which indicates that there were 3,000 converted wetlands in Minnesota, and not 3,000 swampbuster violations. Many of the conversion commenced prior to December 23, 1985, and are exempt. Others will be determined to be actions associated with maintaining existing systems. In some cases the land may have also been converted without any intentions of planting an agricultural commodity and are therefore exempt.



United States
Department of
Agriculture

Soil
Conservation
Service

P.O. Box 2890
Washington, D.C.
20013

Honorable Richard G. Lugar
United States Senate
Washington, D.C. 20510

MAY 13 1988

Dear Senator Lugar:

This is in reference to your letter of March 30, 1988 transmitting for my response two questions submitted for the March 24 record of the conservation oversight hearing.

Regarding question 1, part 1, it is correct that a farmer will not lose Department of Agriculture (USDA) program benefits because of reliance on an initial incorrect determination by SCS that a field was not highly erodible. However, after the farmer is informed that the field is highly erodible, an approved conservation system must be applied to retain future USDA program benefits.

With regard to part 2 of question 1, in the case of wetland conversion, the final rule currently states that the farmer is not exempt from loss of USDA benefits because he converted a wetland based upon incorrect information from SCS. Once informed of the correct determination, the farmer could prevent loss of USDA program benefits by not producing any future agricultural commodities on the converted wetland. If the person believes that conversion has minimal effects to the wetland, a minimal effect determination may be requested.

Your second question concerns the 15-day period during which a farmer must file an appeal to an SCS decision on wetlands or other technical determination. The 15-day period was established as a reasonable time frame for farmers to respond to questions or disagreements about a decision. We did not want to establish a long period of time to accept appeals since that could lead to procrastination and neglect. We believe it is better to expect farmers to appeal promptly if there is an issue with the determination. This 15-day period also provides SCS a timely indicator of acceptability of the technical decisions rendered. Further, we have instructed our field personnel to be liberal in application of the 15-day period to a farmer's initial appeal. Appeals subsequent to the initial appeal are to be handled more stringently. We are not aware of any problems that have developed as a result of the 15-day period. In addition, a person may request more time, if a longer period is needed in order to appeal.

Sincerely,

/s/ MANLY S. WILDER Acting for

bc: (w/copy of incoming information)

Dennie Burns, Assistant Chief, Midwest, SCS, Washington, D.C.

Robert L. Eddleman, State Conservationist, SCS, Indianapolis, Indiana

Dorothy V. Bradbury, Confidential Assistant to the Chief, Congressional and Public Liaison Staff, SCS, Washington, D.C.

Questions submitted by Honorable Richard G. Lugar

QUESTION 1:

Mr. Scaling, I have a question regarding misinformation. As I understand it, if, for example, a farmer had asked SCS in January 1986 whether a field which had been in pasture for many years was or was not highly erodible, local SCS personnel told the farmer that the land was not highly erodible, the farmer planted the field to a commodity crop and then SCS redetermined that the field was indeed highly erodible, the farmer would not lose his benefits because he had relied on the initial SCS determination. Is that correct?

If so, if we look at the same fact situation that I just described except that the farmer wanted to install a new tile drain and had asked SCS if the field were a wetland, my understanding is that we would come to a different result.

My understanding is that reliance on misinformation from USDA regarding wetlands does not exempt the farmer from the penalties of the Conservation Title. As I understand it, the farmer would lose all of his USDA benefits even though he consulted USDA personnel and was given incorrect information.

Mr. Scaling, is there anything you can do to correct this situation?

ANSWER:

Regarding the first part of your question, it is correct that a farmer will not lose department of Agriculture (USDA) program benefits because of reliance on an initial incorrect determination by SCS that a field was not highly erodible. However, after the farmer is informed that the field is highly erodible, an approved conservation system must be applied to retain future USDA program benefits.

With regard to part 2 of the question, in the case of wetland conversion, the final rule currently states that the farmer is not exempt from loss of USDA benefits because he converted a wetland based upon incorrect information from SCS. Once informed of the correct determination, the farmer could prevent loss of USDA program benefits by not producing any future agricultural commodities on the converted wetland. If the person believes that conversion has minimal effects to the wetland, a minimal effect determination may be requested.

QUESTION 2:

I have another question for Mr. Scaling. My understanding is that, once a farmer receives notice that some part of his farm contains wetlands, the farmer has 15 days to appeal that determination. Many farmers in my state have complained that the 15-day period is too short and that should a farmer neglect to appeal in that period, the farmer effectively is locked into that determination forever and may never drain that land even if he believes that SCS was incorrect in classifying that land as a wetland. Can you give me the justification for that 15-day period or is there some possibility that this period can be lengthened or reviewed at some later date?

ANSWER:

The 15-day period was established as a reasonable time frame for farmers to respond to questions or disagreements about a decision. We did not want to establish a long period of time to accept appeals since that could lead to procrastination and neglect. We believe it is better to expect farmers to appeal promptly if there is an issue with the determination. This 15-day period also provides SCS a timely indicator of acceptability of the technical decisions rendered. Further, we have instructed our field personnel to be liberal in application of the 15-day period to a farmer's initial appeal. Appeals subsequent to the initial appeal are to be handled more stringently. We are not aware of any problems that have developed as a result of the 15-day period. In addition, a person may request more time, if a longer period is needed in order to appeal.

Additional question submitted for the record to the SCS Hearing of the Subcommittee on Conservation and Forestry on Oversight of Conservation Programs Administered by USDA, March 24, 1988.

QUESTION 1:

During the hearing, Mr. Scaling was asked about the backlog of requests for technical assistance in SCS field offices.

Question. Please provide for the record an estimate, by state, of the number of producers who have requested but have not yet received assistance from SCS in developing a conservation plan for their highly erodible land.

Question. Please also provide an estimate, by state, of the average length of delay between a producer's request for assistance in developing a plan and the time such assistance is provided by SCS.

ANSWER:

As producers sign up for benefits from ASCS, FmHA, or FCIC they complete the form AD-1026. On this form they indicate their intentions relating to sodbusting and wetlands. This form is also used as the request mechanism for a highly erodible land and wetland determination and for a conservation plan on lands that are highly erodible. Based on this data, the following information is provided which compared the number of determinations made on highly erodible fields with the number of farms with conservation plans written on the highly erodible fields.

We have not monitored at the National level the average length of time between the producer's request and the date of receipt of technical assistance. We do know that our field personnel are notifying farmers that they have highly erodible fields and are encouraging them to develop a conservation plan. Our field personnel are scheduling assistance to them in such a manner as to make the most effective use of our "in the field" time as possible by working with groups of individuals living in the same general area rather than strictly on a first come, first serve basis.

We can assure producers that if a plan has been requested at this time, assistance will be available to develop that plan well ahead of the deadline date of December 31, 1989.

The following table reflects the percentage of ASCS farms or tracts with highly erodible land that have an approved conservation plan.

State	Farms or tracts with HEL acres	Farms or tracts with Cons. Plans	% planned
Alabama	25869	2502	9.7
Alaska	29	29	100.0
Arizona	1316	593	45.1
Arkansas	4521	1224	27.1
California	1932	388	20.1
Colorado	11697	7440	63.6
Connecticut	116	28	24.1
Delaware	151	10	6.6
Florida	1716	914	53.3
Georgia	10678	7239	67.8
Hawaii	7	1	14.3
Idaho	7835	3087	39.4
Illinois	39968	16558	41.4
Indiana	39779	19641	49.4
Iowa	118429	18115	15.3
Kansas	73051	35994	49.3
Kentucky	60610	20321	33.5
Louisiana	1966	629	32.0
Maine	1489	802	53.9
Maryland	1866	452	24.2
Massachusetts	165	22	13.3
Michigan	4510	1880	41.7
Minnesota	19417	12791	65.9
Mississippi	16344	7103	43.5
Missouri	44175	7714	17.5
Montana	6782	5830	86.0
Nebraska	67271	15062	22.4
Nevada	189	46	24.3
New Hampshire	113	17	15.0
New Jersey	840	147	17.5
New Mexico	3653	2599	71.1
New York	17322	7693	44.4
North Carolina	29892	7400	24.8
North Dakota	10790	4074	37.8
Ohio	28918	4949	17.1
Oklahoma	21407	5086	23.8
Oregon	30335	3232	10.7
Pennsylvania	19358	7690	39.7
Puerto Rico	21	13	61.9
Rhode Island	11	0	0.0
South Carolina	3872	1320	34.1
South Dakota	12156	1562	12.8
Tennessee	24014	12313	34.7
Texas	35449	21627	61.0
Utah	1548	1048	67.7
Vermont	536	371	69.2
Virginia	33719	7559	22.4
Washington	7736	1112	14.4
West Virginia	1449	659	45.5
Wisconsin	22106	14396	65.1
Wyoming	2024	896	44.3

QUESTION 2:

Mr. Scaling's testimony referred to a Memorandum of Understanding between SCS and the Extension Service to increase cooperation in Food Security Act related education and information efforts. The testimony indicates that state conservationists have the authority to transfer funds to state Cooperative Extension Services to produce educational materials and to assist SCS in group planning.

Question. Please indicate the contracts that have been entered into to date between state conservationists and state Cooperative Extension Services, the amount of funds transferred per contract to date, and the amount of funds likely to be transferred per contract in the future.

Please also indicate the states where such contracts are likely to be entered into during FY 1988, and an estimate of the amount of funds likely to be transferred per contract.

Answer. We are aware of the following contracts:

Utah	\$ 10,000
Kansas	\$ 32,000
Illinois	\$ 11,650
Virginia	\$100,000
Florida	\$120,000
Indiana	\$ 3,200
Montana	\$ 29,000

We do not have an estimate of funds that will likely be transferred to the Cooperative Extension Service in the future.

Senator FOWLER. Have you got any backlog in request for assistance in the SCS offices?

Mr. SCALING. Yes, in some offices, we do.

Senator FOWLER. What sort of ballpark figure do you have of the backlog?

Mr. SCALING. Well, I am going to let my Deputy for Programs, Mr. Bridge, answer that, please.

Mr. BRIDGE. Senator, we do not have any definitive data on that except as we call out and talk to our field people and so on. Certainly in some counties in the country where we have very high levels of HEL lands, there are backlogs of maybe up to 100, 150 producers. We think that is healthy. That gives us an opportunity to move quickly into the group conservation planning approach. It identifies those producers that want and need plans and we would love to have all of the farmers on that list who are required to be into compliance by 1995.

Senator FOWLER. What does that mean in terms of personnel meeting with them and granting that assistance? Does the farmer have to wait a month, 2 months, 3 months without assistance that he is voluntarily asking for?

Mr. BRIDGE. Yes. I am aware of at least one county because it happens to be a State I used to work in, Whitman County, Washington, that people may be waiting up to 3 or 4 months in that particular area. But, again recognize that Whitman County has 1 million acres of highly erodible land in it. The people there, in that State, are doing everything they can to detail additional employees, part-time people and using the conservation districts in that setting.

Mr. SCALING. Thank you sir. Thank you Galen.

Senator FOWLER. Mr. Scaling, just before you conclude we want to welcome the Chairman of the full committee, Senator Leahy, who is also involved in some defense measures today. We appreciate him coming.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM VERMONT

The CHAIRMAN. Mr. Chairman, I wonder if I could just make a couple of points. First, of course, is to congratulate you on holding this hearing. I think it is extremely important. The conservation title and what we did in the 1985 farm bill is really landmark legislation. We all worked very, very hard on that. We balanced a lot of views, a lot of concerns of members to put the conservation title through. What we did was set a precedent, which I would like to see in all future farm bills.

We said that agricultural programs have got to be consistent with environmental goals. They have got to support environmental goals. They cannot undermine our national environmental goals. This is important because, as you know, when we try to bring farm programs or agricultural programs on the floor of the Senate, we need all kinds of support to do that. We are not going get the broad support we need for agricultural programs if we renege on these environmental commitments.

It does not make any sense to the average taxpayer to pay American farmers to destroy American wildlife so they can sell grain to Russian farmers or to Russians, period. You cannot really go on the floor and say this is a sensible program. Are we going to tell the taxpayers of America that we will pay American farmers to destroy their wildlife and then we will sell their grain to the Russians? It does not work and none of us want it to.

We have two major conservation programs. The first is swampbuster. Our wetlands, large and small, have great environmental value. I want to send a very clear message, as chairman of the committee, that swampbuster has to be fully and fairly enforced. That is my commitment.

The second is conservation compliance. Farmers have got to develop conservation plans for all highly erodible land by 1990. That is a major responsibility not just for farmers; it is a major responsibility for the USDA as well. I would say to the USDA—if you are going to need some help to meet this deadline, better ask for it now. This is your chance. Tell Senator Fowler, Senator Boschwitz, and Senator Conrad you need the help. We will leave it to them to get it for you. But, you have got to ask for it now.

As chairman of this committee, I do not want 500,000 farmers coming in here next year saying—oh, we did not know about compliance. The SCS did not help us. And then hear back from USDA—well, there were not enough people, there was not enough resources to get the work done. If you are going to need help, ask for it now. Make sure people know what they have to do. Because the progress that we have made on this conservation title will be the litmus test about public concerns on the environmental effect of farm programs in 1990. The conservation title is going to be where we can tell the rest of the Senate that we faced up to the test—the test that the public has given us about the environmental effect of farm programs. We need to be able to pass the test. You in USDA are important in helping us do that. We will give you the help, but tell us exactly what you need.

Mr. Chairman, as I said, I commend you for this hearing. Senator Conrad has spent a great deal of time talking to me about the effects of swampbuster in his State. I know how important it is. Senator Boschwitz has helped put together coalitions on these conservation programs. They are extremely important programs. We need to make them work before we lose our credibility and before we start the 1990 farm bill.

Senator FOWLER. Thank you, Mr. Chairman. Thank you.

Senator CONRAD. Mr. Chairman, if I might before Chairman Leahy leaves, just echo the plea that my farmers are making to me that is in line with, I think, the essence of what you are saying. On the one hand we are not going to, and I do not think anybody intends to, do away with the swampbuster and sodbuster provisions. But at the same time if there is to be ongoing support, mutual support between the two communities, we need to hear each other when one or the other has a reasonable complaint. And with respect to swampbuster, Mr. Chairman, our farmers have a reasonable complaint.

If we look at the intent of Congress, it is abundantly clear that the intent was not to have new wetlands converted. But it was also

clear that we would not go back and take away from farmers land that they had previously cropped. We have a terribly serious problem with the penalty, which is a drop dead penalty. If you make an even minor violation, you lose your farm program payments.

I just had a couple come to me, 60 years old. The man, who did not even have a high school education, had measured improperly and he seeded 8 acres too much of wheat. And he now is threatened with the loss of all of his farm program benefits, which would, of course, mean their bankruptcy of the family farm. His wife and he came to one of my community forums. The wife, in describing what had happened, started crying because she knew that everything that they had worked a lifetime to build up could be lost because of an inadvertent error of cropping 8 acres of wheat because of the penalty provisions.

The CHAIRMAN. I know that, on that particular matter, you have discussed it also with Secretary Lyng, and as I have told him and I have told everybody here, I would hope that the local county committees are going to reasonably implement the law. The law is there. The law will be enforced. But let us be also reasonable and realistic about it, especially as it is something new that we are going into. I will work with you on that. However, I see a most anxious member of the staff from the other committee that I was suppose to be at, and I am going to leave on that one. Thank you very much.

Senator BOSCHWITZ. Mr. Chairman, if I may expand for not to exceed a minute on that. I agree with Senator Conrad on the importance of the environmental and agricultural communities cooperating on these issues. I note that in some testimony by the National Wildlife Federation, that in looking at the history of the bill, they point out that what it was aimed at was the conversion of more land resources into agricultural production. Some of the problems that are arising is due to water that is found to be on existing, producing land designated as wetlands. Suddenly we find difficulties with farmers. Whether or not they are violating provisions of the law, I am not sure. The intent of the bill that Senator Conrad and I have introduced, which we will be talking to you about, is to try and avoid that question. We want to work with both communities. I think that we both have that in mind.

The CHAIRMAN. We will make it work.

Thank you.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY, A U.S. SENATOR FROM
VERMONT

STATEMENT ON MIDTERM REVIEW OF CONSERVATION PROGRAMS, MARCH 24, 1988

Mr. Chairman, I first want to commend you for holding this hearing today. A mid-term review of the progress of the conservation title of the Food Security Act is very important to the eventual success of the title. I am pleased to see the Subcommittee taking on this challenge.

The conservation title of the 1985 farm bill established a precedent—the precedent that agricultural programs must be consistent with, must support, and must not undermine our nation's environmental goals. It will take a great deal of education, and effort, and money to make them work.

We have to keep in mind that the precedent of this title is going to remain with us. If we are going to ensure the same broad-based support for agricultural pro-

grams in 1990 as we had in 1985, we cannot afford to renege on our commitment to the conservation provisions we established.

Part of that commitment was an effective swampbuster provision. We must have broad support—in the Congress and in the public—when we write the 1990 farm bill. We will not get it if the American public believes that we are paying farmers to drain wetlands.

Our wetlands, large and small, have enormous environmental and wildlife values. The swampbuster provision was specifically designed to protect these wetlands. Its implementation must be flexible and reasonable. But let the message be very clear from the Chairman of this Committee. I believe that it must be fully and fairly implemented.

The second critical element of the 1985 farm bill is the requirement that farmers develop conservation plans for controlling erosion on highly erodible lands by 1990. In this regard, I would say to today's witnesses from USDA that this is your opportunity to ask for help, if you need it, in meeting that deadline. As Chairman of this Committee, I do not want 500,000 farmers on the doorstep next year saying that they did not know about compliance, or that they have not been able to get help from SCS in developing a plan. We need to know today that it will not be a problem—or how to prevent it if it might.

We need today to look ahead to our 1990 farm bill debate. If we are going to hold a consensus together on the 1990 farm bill, we will have to assure the general public that farm programs are contributing to the protection of our environment, not adding to the problem. Our progress on the conservation title will be the litmus test in 1990. We need to be sure we can pass the test.

Senator FOWLER. Mr. Scaling, I ask you to submit the rest of your remarks for the record.

Mr. SCALING. Yes sir.

Senator FOWLER. Can you understand how we work around here? We never see each other on the floor. We only debate in the committees. [Laughter.]

Mr. SCALING. Yes.

Senator FOWLER. So we take over your time. And all of my questions and interrupting you, as well as the Chairman's, is a concern which he echoed, that we have adequate personnel in the field now to handle those which you described as voluntary request for assistance. If we do not have, if we have a 2- and 3-month backlog, we have to figure out something to do about that, it seems to me. Both with existing personnel that might be sent to the field, as well as any request that you or others might have along the lines that Senator Leahy mentioned. Thank you.

Linda Fisher, Environmental Protection Agency.

**STATEMENT OF LINDA J. FISHER, ASSISTANT ADMINISTRATOR
FOR POLICY, PLANNING, AND EVALUATION, U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Ms. FISHER. Thank you, Mr. Chairman. My name is Linda Fisher. I am the Assistant Administrator for Policy, Planning, and Evaluation at the Environmental Protection Agency. This is my first appearance before your subcommittee and I welcome the opportunity to talk to you today about the progress that has been made under the Conservation Reserve Program.

As you are aware, there are many concerns in the agricultural community that coincide with ours in the environmental community. These include pesticide contamination of ground water, field erosion and runoff into streams, as well as the disappearance of wildlife.

The Conservation Reserve Program which was established under the Food Security Act of 1985 has the unique potential to address many of these shared concerns. In developing the CRP regulations USDA has identified water quality as one of the criteria to be considered in selecting lands for the CRP. EPA and farmers alike are concerned about surface and ground water quality. Farmers depend on these resources for their drinking water supplies, as well as for their production. Therefore, all of us are very fortunate that the USDA has shown such great leadership and vision in terms of implementing the CRP.

At the same time that the CRP regulations were being developed at USDA, we at EPA were asked to renew our efforts to control nonpoint sources of pollution under the Clean Water Act of 1987. Specifically, under that act, States were asked to do several things which, I think, will provide information that will be of help to the USDA as they implement the CRP.

First, the States were asked to identify those waters that had been impaired by nonpoint source runoff. That information is due to EPA in April of this year.

Second, the States were asked to develop management plans to address nonpoint source concerns. Those management plans are due to the Agency in August of this year.

And finally, the EPA was asked to identify national estuaries of most significance and to develop management plans to protect those estuaries.

We realize at EPA that our traditional approach toward the control of pollution, that of identifying emission standards and then putting into place control technologies, is ill-suited to controlling nonpoint source runoff. We have been working with USDA to explore the potential that the CRP provides us to address nonpoint source problems. The inclusion of filter strips in the CRP is an example of how we believe we can mitigate some of the nonpoint problems. Additionally, the success that USDA has already had in controlling highly erodible land will also be of help to us. We also have some preliminary analysis that is currently being reviewed at the Department of Agriculture which suggests that in addition to environmental benefits there also may be some economic gains to be made by focusing more of the CRP on environmental and water quality objectives. Our studies suggest that as additional acres are selected for enrollment on the basis of water quality, we may be able to obtain significant water quality improvements at no additional cost to the United States Treasury.

We are also interested in exploring with the Department of Agriculture use of the CRP to protect ground water and to create buffer strips around endangered species habitats, in cases where we are going to be retiring acreage from production. This, we believe, will be compatible with USDA's concerns in meeting the CRP's objectives and will also complement their efforts to reduce soil erosion.

The EPA appreciates the opportunity to testify before your committee on this very important program and we look forward to working with you, and particularly the people in the USDA as they continue to implement this program. Thank you.

[The prepared statement and responses to questions of Ms. Fisher follow:]

STATEMENT OF LINDA FISHER ASSISTANT ADMINISTRATOR FOR POLICY,
PLANNING, AND EVALUATION U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON CONSERVATION AND FORESTRY COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
U.S. SENATE
March 24, 1988

Good Morning Mr. Chairman and members of the Subcommittee. I am Linda Fisher, Assistant Administrator for Policy, Planning and Evaluation. This is my first appearance before your Committee and I welcome the opportunity to discuss the progress being made under the Conservation Reserve Program (CRP) portion of the Food Security Act of 1985.

My office is responsible for the economic analysis of the Environmental Protection Agency's programs, policies, standards and regulations. In that capacity we have been working with our office of Water, the U.S. Department of Agriculture and the Fish and Wildlife Service to bring together the conservation, environmental and agricultural policy objectives of the Conservation Reserve Program.

There are many concerns in the agricultural community that coincide with those of the environmental community. These include pesticide contamination of rural groundwater supplies, field erosion and runoff into streams and disappearance of wildlife. The CRP has the unique potential to address many of these shared concerns.

The Conservation Reserve Program is designed to assist owners and operators of highly erodible lands in conserving and improving soil and water resources of their farms or ranches. The CRP objectives are (1) to remove fragile lands from production and in doing so to reduce the nation's aggregate soil erosion; (2) to stabilize commodity prices; (3) to reduce production of surplus agricultural commodities; (4) to create a better habitat for fish and wildlife; and (5) to reduce sedimentation and improve water quality. While all of these are important objectives the last two are of particular interest to my Agency.

One of EPA's major interests in the CRP relates to water quality management. This interest is due in part to the pervasiveness of nonpoint source water pollution. Major nonpoint sources include runoff from agriculture, mining, and forestry activities and urban uses. Indeed, six out of ten EPA Regions considered it to be their principle remaining surface water quality problem. In fact in 1986, 33 states reported that nonpoint source pollution was a significant water quality problem. They find that agricultural runoff is the most common nonpoint source pollution problem.

With such nonpoint source pollution control problems in mind, we very much support the Conservation Reserve Program. USDA should be congratulated for the fine job it has done in implementing the program. We believe the CRP by removing erodible cropland from production has been effective in reducing soil erosion. In addition, our analyses investigating the impact of the CRP on water quality, and now being reviewed by USDA,

suggest that there have been improvements in surface water quality. For example, they indicate that there has been a 4.5% reduction in sediment loadings as a result of the first four sign-ups. We are also examining the CRP's potential to address groundwater quality concerns.

Last December the Presidential Task Force on Regulatory Relief announced policy initiatives involving the CRP. These initiatives are intended to increase the number of acres eligible for the CRP as well as to preserve environmentally sensitive areas not covered by the previous rule. In particular, the modification of CRP criteria includes filter strips along wetlands and other water bodies. This change will increase the environmental protections afforded by the program. Filter strips can reduce the movement of sediment and sediment-related pollutants into water bodies. They can also reduce erosion of cropland areas by providing a safe place for water to leave the field, thus preventing the formation of gullies. Finally, filter strips provide habitat for wildlife by preserving the integrity of the ecological connection between wetlands and adjacent uplands. Together with the benefits of the "Swamp-busters" program, the use of filter strips can provide important protection for our wetlands, a valuable and dwindling environmental resource. We believe there are many areas of the country that will be able to include more environmentally vulnerable land within the total acres that can be placed in the CRP. It may be possible to expand eligibilities to include some of the remaining acres in the current program for water quality at no additional cost.

Another change allows states and other private organizations to "piggy-back" or supplement the federal CRP dollars to encourage additional enrollment. EPA endorses this improvement. It will allow states to offer additional inducements to farmers with eligible land and thereby enable the program to better address local objectives.

Our mandates under the Safe Drinking Water Act, Water Quality Act of 1987, Federal Insecticide, Fungicide and Rodenticide Act require us to assess sources of water contamination. This information would be very useful to USDA in focusing the CRP at lands where agricultural activities are seriously affecting water quality. We will continue to support the USDA to ensure the continued success of the Conservation Reserve Program.

Increasing the environmental emphasis within the CRP has much merit. We commend the agricultural leadership and its recognition of the compatibility and potential synergism in achieving mutual goals.

This concludes my prepared testimony, Mr. Chairman. I will be happy to answer any questions you may have.

SUMMARY OF STATEMENT OF LINDA FISHER
ASSISTANT ADMINISTRATOR FOR POLICY, PLANNING, AND EVALUATION
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON CONSERVATION AND FORESTRY
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY
U.S. SENATE
March 24, 1988

The purpose of the testimony is to discuss the progress being made under the Conservation Reserve Program (CRP) portion of the Food Security Act of 1985.

The Conservation Reserve Program is designed to assist owners and operators of highly erodible lands in conserving and improving soil and water resources of their farms or ranches. The objectives are (1) to remove fragile lands from production and in doing so to reduce the nation's aggregate soil erosion; (2) to stabilize commodity prices; (3) to reduce production of surplus agricultural commodities; (4) to create a better habitat for fish and wildlife; and (5) to reduce sedimentation and improve water quality. While all of these are important objectives the last two are of particular interest to the Agency.

EPA's major interest in the CRP relates to water quality management. This interest is due in part to the pervasiveness of nonpoint source water pollution. EPA is also examining the CRP's potential to address groundwater quality concerns.

The Presidential Task Force on Regulatory Relief last December announced policy initiatives involving the CRP. These initiatives are intended to: (1) increase the number of acres eligible for the CRP as well as to preserve environmentally sensitive areas not covered by the previous rule. EPA believes there are many areas of the country that will be able to include more environmentally vulnerable land within the total acres that can be placed in the CRP. It may be possible to expand eligibilities to include some of the remaining acres in the current program for water quality at no additional cost; and (2) allow states and other private organizations to "piggy-back" or supplement the federal CRP dollars to encourage additional enrollment. EPA endorses this improvement.

EPA will continue to support the USDA to ensure the continued success of the Conservation Reserve Program.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510-8000

April 7, 1988

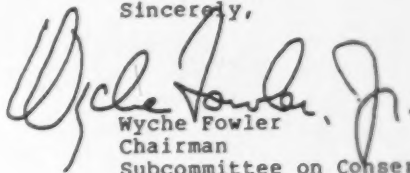
Ms. Linda Fisher
Assistant Administrator
Environmental Protection Agency
401 M Street. S.W.
Washington, D.C. 20460

Dear Ms. Fisher:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
Chairman
Subcommittee on Conservation and
Forestry



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 23 1988

OFFICE OF
POLICY, PLANNING AND EVALUATION

Honorable Wyche Fowler
Chairman
Subcommittee on Conservation
and Forestry
Committee on Agriculture, Nutrition
and Forestry
United States Senate
Washington, D.C. 20510-6000

Dear Mr. Chairman:

Enclosed for your review and consideration are my answers to the additional questions you submitted following my appearance and testimony before the Subcommittee on Conservation and Forestry on March 24, 1988 regarding the Conservation Reserve Program. I hope this material will be of assistance to you and the members of the Subcommittee.

If there is any further information I may furnish you, please do not hesitate to contact me.

Sincerely,

Linda J. Fisher
Linda J. Fisher
Assistant Administrator

Enclosure

ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD
TO THE ENVIRONMENTAL PROTECTION AGENCY

Hearing of the Subcommittee on Conservation and Forestry
On Oversight of Conservation Programs Administered by USDA
March 24, 1988

1. Ms. Fisher's testimony indicated that better targeting of acreage enrolled in the Conservation Reserve Program would result in greater improvements in surface and groundwater quality.

Please indicate, within the existing authority of the current program, what steps EPA would recommend to improve the targeting of CRP enrollment for water quality benefits.

If the CRP was to be expanded beyond the current 45 million acre goal, please indicate what type of targeting EPA would recommend to maximize water quality benefits from such an expanded program.

2. The Committee understands that EPA recently sponsored research on the CRP and its opportunities for water quality improvements if it were to be expanded and targeted.

Please provide for the Committee a summary of the results of this research to date, including any estimates of benefits and costs of such an expansion. Please also provide the Committee with any final document released by the Agency on this subject.

3. Ms. Fisher's testimony endorsed USDA's recent change in the CRP to allow states to supplement federal CRP dollars to encourage additional enrollment.

Please indicate what additional steps EPA would recommend in order to encourage states to supplement CRP contracts with state funds.

1. Ms. Fisher's testimony indicated that better targeting of acreage enrolled in the Conservation Reserve Program would result in greater improvements in surface and ground-water quality.

a. Please indicate, within the existing authority of the current program, what steps EPA would recommend to improve the targeting of CRP enrollment for the water quality benefits.

b. If the CRP was to be expanded beyond the current 45 million acre goal, please indicate what type of targeting EPA would recommend to maximize water quality benefits from such an expanded program.

a. There is limited time left for USDA to achieve the goal of 45 million acres in the CRP and EPA is not advocating changes in the program. If USDA seriously considers any CRP eligibility changes to the current program, water quality should be the number one priority. Water quality benefits could be attained by including any cropland acres that would reduce sediment delivery to water bodies. However, there are several recent developments that could improve the targeting of CRP enrollment for water quality benefits. The Vice President's Task Force on Regulatory Relief announced USDA actions to include filter strips in the CRP and to promote greater participation by state and private organizations by "piggybacking" on the CRP. Filter strips, cropland areas 66-99 feet wide with a permanent cover next to streams, lakes, and estuaries, are eligible for the CRP, even if the highly erosive soil criteria is not met. EPA supports the USDA recommendation that farmers use CRP enrollment as a cost-effective option for controlling their nonpoint source pollution emptying into valuable water resources. These filter strips must be adjacent and parallel to streams having a perennial flow, seasonal streams (except gullies and sod waterways), or other water bodies of a permanent nature (including wetlands) with water areas of not less than five surface acres and capable of substantially reducing damage by sedimentation and associated pollutants.

Our analyses indicate that there are regions of the country where improvements in water quality are achievable by idling cropland (e.g. Corn Belt, Delta States, Appalachia). Enrollment of acres in these regions might increase the dollars expended upon the CRP program since these cropland acres are typically more productive and therefore more expensive to rent. The sixth signup required the ASCS county committees to review individual bids to determine that each bid was less than the prevailing local rental rate in order that maximum acceptable rental rates be increased in some of these areas. This provided for greater latitude by county committees in selecting bids from acres in their county, including those areas where cropland controls could provide substantial water quality benefits. However, our research suggests that this increase in CRP payments would be

offset by decreases in government costs in the wheat and feed grain programs, assuming current program parameters remain intact.

b. The decision to extend or expand the CRP will be based upon a wide number of criteria including economic and environmental impacts. While EPA is not, herein, advocating any extension or expansion of the CRP, our research should be helpful in the decision making process regarding the desirability of a new land retirement program or expansion of the CRP. While it is obvious that retirement of lands currently degrading water quality would yield environmental improvements, it is imperative to determine if those environmental improvements increase net social well-being.

However there are several off-site environmental concerns which the present CRP or Conservation Compliance rule does not address. If the decision were made to expand the CRP beyond the current 45 million acres, EPA feels that it is essential for such an expansion to be focused on off-farm damages. Enrollment of the current target of 45 million acres, in tandem with rigorous enforcement of the Conservation Compliance program will maintain the quality of our cropland resource and greatly reduce the soil erosion problem on highly erodible land. An expanded CRP or a new CRP type program might address a number of environmental issues including: surface water quality, ground water contamination, and wildlife habitat protection.

Although controlling erosion on highly erodible cropland does have some positive impact on water quality, large improvements in water quality will only be achieved if we focus erosion control efforts in those areas, and on those parcels of land which have the greatest impact on agricultural nonpoint source pollution loadings. These lands may not themselves be highly erodible. They may, however, be adjacent to a water body of particular concern, or in a high priority watershed.

State Nonpoint Source Management Plans, as required by Section 319 of the Water Quality Act of 1987 (which are due to EPA regional offices in August, 1988), will identify the highest priority watersheds in a state and will specify management approaches to achieving water quality objectives in those areas. These plans could then be used to focus enrollment in an expanded reserve for the purpose of improving water quality, while achieving the other goals of the program as well. Successful implementation of the Water Quality Act necessitates the close coordination of EPA and state water quality agencies with USDA and the CRP offers an opportunity for linking agricultural and environmental objectives in a positive manner.

If the CRP were to be expanded or similar type land retirement programs were initiated, it may also be desirable to allow farmers whose operations are severely impacted by other environmental restrictions or concerns, to put their land into an expanded CRP. For example, if a farmer is effectively prevented from growing crops on his land, due to the likelihood of pesticide and fertilizer contamination of groundwater, the CRP could provide an effective mechanism for partially compensating

the farmer from loss of use of his land. An expanded CRP could also be used in the same manner to provide compensation to farmers for losses resulting from implementation of the Endangered Species Act.

2. The committee understands that EPA recently sponsored research on the CRP and its opportunities for water quality improvements if it were to be expanded and targeted.

- a. Please provide for the Committee a summary of the results of this research to date, including any estimates of benefits and costs of such an expansion. Please also provide the Committee with any final document released by the Agency on this subject.

While the role of EPA's Office of Policy, Planning and Evaluation is not to advance or advocate policies such as extension or expansion of the CRP, our research has examined some of the impacts of targeting and expanding the CRP. The analysis included examination and estimation of potential changes in the geographic distribution of CRP enrollment, planted acres, commodity prices and government costs (direct CRP payments and commodity program payments).

The examination of the impacts of a 20 million acre expansion of CRP (targeted for water quality) was significantly more difficult. While the estimation procedures required assumptions regarding price elasticities of exports and domestic use, substitutability of commodities and approximately 50% decreases in Acreage Reduction Programs and Paid Diversions. While no reports or other final documents have been released as yet, copies of any reports will be forwarded to the committee when they are available. This research suggests a targeted 20 million acre CRP expansion would decrease planted acres by several percentage points and the prices of a variety of commodities would increase by 0.9% to 8.9%. These price impacts assume the approximately 50% reductions in USDA's Acreage Reduction Program and Paid Diversion percentages. The price impacts would be much more dramatic if reductions in ARP and PD were not altered. While CRP enrollment would increase in all regions of the country, the distribution of total CRP acres would shift, resulting in an increase in the Corn Belt, Appalachia, and Delta States regions, a highly desirable shift with respect to national water quality objectives. While the estimates of the cost of CRP payments to the Treasury show an increase, the cost of the commodity support programs show a comparable decrease. This decrease is due, in part to: 1) a narrowing in the gap between the target price and the market price (deficiency payment), as the market price increases; and, 2) a reduction in the number of farmers participating in the commodity programs as the market opportunities look more favorable. This research suggests that the net result of this increased CRP, focused on water quality, would be a decrease in government expenditures of

between \$200 million and \$600 million per year, utilizing the study's assumptions and present commodity program parameters.

3. Ms. Fisher's testimony endorsed USDA's recent change in the CRP to allow states to supplement federal CRP dollars to encourage additional enrollment.

- a. Please indicate what additional steps EPA would recommend in order to encourage states to supplement CRP contracts with State funds.

To encourage states to supplement CRP contracts with state funds, EPA recommends greater federal-state coordination. EPA is especially interested in the coordination of states' implementation of the Nonpoint Source provisions of the Water Quality Act with the federal programs under the Conservation Title of FSA 85. State water quality agencies need to be more aware of the opportunities available to them through programs such as the CRP. The initiatives that Minnesota, and more recently, Maryland have taken should be show-cased as prime examples of states getting the most out of coordination of their state programs with a federal program. The piggybacking of state programs onto the CRP is seen, by EPA, as an extremely positive step. Utilization of state funds and programs for piggybacking with the CRP can best be utilized in areas where land rental rates are higher than the amount the CRP is authorized to pay and where water quality benefits can be achieved (e.g. Corn Belt, Appalachia, Delta States). We suggest that similar efforts involving private non-profit groups might yield even greater long-term protection of our soil and water resources. This might include various types of easements, options for purchase at the end of CRP contracts, restrictions on management practices, etc. These and other innovative public-private partnerships need to be more thoroughly investigated.

EPA has prepared a guide for state water quality officials on how to use the CRP in their state water quality management plans. EPA also has a manual for state officials on how to assess water in non point areas, and how to target those waters for use of limited funds. EPA's regional water quality coordinators have been instructed to work with their state counterparts, and with USDA personnel in incorporating the CRP in their state management plans. However more needs to be done to ensure consistency within the federal programs as well as between federal and state programs.

Senator FOWLER. Thank you very much Ms. Fisher. Mr. Ronald Lamberton, the Assistant Director of Fish and Wildlife Enhancement.

**STATEMENT OF RONALD E. LAMBERTSON, ASSISTANT DIRECTOR
FOR FISH AND WILDLIFE ENHANCEMENT, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR**

Mr. LAMBERTSON. Thank you, Mr. Chairman. I am pleased to be here today to discuss the progress that has been made in implementing the conservation provisions of the Food Security Act of 1985 and to address particular concerns of the committee regarding certain types of our Nation's wetlands. I have a full statement for the record and I will merely summarize at this time.

Senator FOWLER. Thank you.

Mr. LAMBERTSON. The Fish and Wildlife Service has worked long and hard with the USDA to assist in implementing the wetland conservation provision of the Food Security Act of 1985, commonly known as swampbuster. This provision has tremendous potential to assist in halting the declining trends of waterfowl populations in North America. The Service has been involved in a consultative role with the Soil Conservation Service and the ASCS relative to wetland identification matters and exemptions to swampbuster.

In general, the Fish and Wildlife Service has had a good working relationship with these agencies, providing assistance when requested. However, at this early stage of implementation, we have not had the opportunity for much consultation at the field level and that is because a lot of the guidelines on implementation are not yet out at the field level on swampbuster. We are looking forward to that opportunity.

The Service has, in its review of our own easement and land situation in North Dakota and South Dakota, indicated to ASCS that over 200 instances of swamp or wetland conversion have taken place.

Mr. Chairman, you asked us to suggest ways in which consultation could be improved. A number of suggestions are included in the full statement which include:

Increasing Service participation in wetland determinations, appeals, and compliance spot checks.

Providing enough advance notice for the Fish and Wildlife Service to be able to provide meaningful input on "commenced" and "third-party" determinations.

Establish a simple and rapid mechanism for dialog and problem resolution between the Service and USDA in those individual cases where the consultation process results in differences of opinion on wetland identification matters and swampbuster exemption determinations.

And, continuing to involve the Fish and Wildlife Service at the national level to assist especially in the implementation of guidelines and policies.

Another area that you asked us to address is the effectiveness of swampbuster. At this point in time the Service has no firm evidence to indicate to what extent swampbuster has reduced the loss of wetlands due to agricultural activities on a national level. Serv-

ice personnel continue to observe agricultural wetland conversions for agricultural purposes. For example, drainage rates in North Dakota and Minnesota in 1987 appeared to be the highest in 10 years. Only now are all of the administrative tools in place for full implementation. The final regulations were issued on September 17, 1987. We are now entering the planting season around the country. The next few months will provide the evidence as to whether or not swampbuster will actually reduce wetland losses.

Mr. Chairman, you specifically asked the Service to explain why "type 1" wetlands are important to wildlife. The term, type 1 wetlands, is taken from an obscure wetland classification system which we discontinued using in 1979.

Popular usage of the term, type 1, in relation to recent discussions on swampbuster, applies to so-called nuisance spots in agricultural fields, such as ephemeral wetlands, temporarily flooded wetlands, saturated soils and many seasonally flooded wetlands. For today's discussions I will refer to this popular concept of type 1 wetlands to cover all of these temporarily flooded situations.

Type 1 wetlands are relatively small, generally ranging from less than one-tenth of an acre to over 10 acres in size. The Service estimates that 70 percent of all wetland acreage, approximately 3.7 million acres, in the prairie pothole region fall within the popular concept of this type 1 classification. A full 60 percent of this acreage is within croplands. The wildlife values associated with the loss of these wetlands are significant.

For example, there are type 1 wetlands supporting approximately 15 to 63 percent of mallard and pintail breeding populations within the United States. The Fish and Wildlife Service estimates that a total breeding population of about 5.3 million dabbling ducks in the prairie pothole region of North and South Dakota, Minnesota and Montana, is directly related to these type 1 wetlands. If these remaining type 1 wetlands disappear, it is estimated that there will be a 20-60 percent reduction, or 1.0-3.2 million fewer dabbling ducks, in this population will occur. In terms of the fall migratory flight of waterfowl, this translates into a reduction of approximately 6.4 million ducks heading South each year from the prairie pothole region of the United States.

The North American Waterfowl Management Plan, agreed to by the United States and Canada in 1986, and currently under negotiation with Mexico, recognizes that conservation of habitat is imperative if waterfowl are to be maintained. It concludes that, "all other efforts will be in vain if the ongoing trend of habitat degradation is not reversed. . . ." If type 1 wetlands continue to disappear, there is little doubt that it will not be possible to maintain even the current, depressed populations of waterfowl on the continent. Much of the wetland protection and restoration work of the Fish and Wildlife Service is directed at these types of shallow wetlands.

Finally, you requested our views on the ways to improve swampbuster implementation.

We believe that the conservation concepts embodied in swampbuster are straightforward and sound. Swampbuster simply needs to be fully implemented on the ground. Farmers are currently confused and worried because determinations have not been made on their farms or because swampbuster compliance procedures are not

clearly understood. Wetland determinations must be made on farms where they are required. All of us charged to implement swampbuster need to roll up our sleeves, take this program to the farms and explain to the farmers face to face where their wetlands are and which ditches can be maintained. Straightforward implementation will begin to reap the conservation benefits envisioned in this provision and will help clear up remaining confusion with swampbuster. Thank you, Mr. Chairman.

[The prepared statement and responses to questions submitted, with attachments, of Mr. Lambertson follow:]

TESTIMONY OF RONALD E. LAMBERTSON, ASSISTANT DIRECTOR FOR FISH AND WILDLIFE ENHANCEMENT, U. S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE COMMITTEE ON AGRICULTURE, SUBCOMMITTEE ON CONSERVATION AND FORESTRY, CONCERNING THE 1985 FOOD SECURITY ACT

MARCH 24, 1988

Mr. Chairman, I am pleased to be here today to discuss the progress that has been made in implementing the conservation provisions of the Food Security Act and to address particular concerns of the committee regarding certain types of our Nation's wetlands.

I firmly believe that the deliberations of this committee and the future success or failure of the wetland conservation provisions of the Food Security Act will have a direct effect on the future of the North American waterfowl population, as well as other fish and wildlife resources.

The continental waterfowl populations are directly dependent on conservation of their wetland habitats. Historically, about 87 percent of wetland losses in the United States have resulted from agricultural activities, and approximately 90 percent of the Nation's wetlands are in private ownership. Clearly, the prospective benefits for waterfowl through the wetland conservation provisions of the Food Security Act are enormous.

The Service has worked long and hard with the Department of Agriculture in helping them to develop the regulations to implement the conservation provision of the Food Security Act. The Service has been most active in the wetlands conservation provisions, commonly known as "Swampbuster," because of the tremendous potential to assist in halting the declining trends of waterfowl populations in North America.

Mr. Chairman, your invitation requested that we address certain issues. I will first discuss our current consultation process with the Department of Agriculture.

The function of the Service in implementing the Food Security Act, as provided by Congress, is to assist in a consultative role. The Soil Conservation Service is required to consult with the Service on exemptions to Swampbuster and on matters relating to wetland identification. The Agricultural Stabilization and Conservation Service consults with the Service on all determinations for conversions "commenced" prior to the Act or caused by a "third party."

The Service has been involved in developing necessary information and in training with the Soil Conservation Service, primarily at the State level, but has had very little involvement in actual on-the-ground wetlands determinations, appeals, or routine compliance spot-checks. In Montana and North Dakota, for example, Service personnel have visited nearly every local Soil Conservation Service office offering assistance in wetland identification matters. It

is our understanding that due to workload constraints, the Soil Conservation Service conducts a majority of wetland determinations in the office without any field work.

Service consultation with the Agricultural Stabilization and Conservation Service has been generally at the County Committee level. Typically, the Service is notified from two days to two weeks in advance of County Committee meetings to make "commenced" determinations. In some cases, consultation notification to the Service occurs after the County Committee has made a decision but before that decision has been conveyed to the farmer. The Service usually provides written comments to the County Committee and in some cases attends the meeting at which the determination is being considered. In nearly every case, consultation is concluded with this written or oral comment by the Service.

The Service has reported numerous instances of apparent wetland conversions -- 200-250 in North and South Dakota and 100 in Minnesota, for example -- to the local Agricultural Stabilization and Conservation Service office. Some offices have welcomed this assistance, finding it useful to resolve potential conflicts with producers at an early stage.

At the National level the Service has sought to be as active as possible in assisting the Department of Agriculture in developing regulations and procedures, as well as in resolving policy and procedural problems that arise between our agencies.

You also asked us to suggest ways in which consultation could be improved. These would include:

- o Involve Service personnel in the field to assist with wetland determinations, appeals of wetland determinations, and compliance spot-checks of determinations.
- o Provide enough advance notice for the Service to be able to provide meaningful input on "commenced" and "third party" determinations.
- o Establish a simple and rapid mechanism for dialogue and problem resolution between the Service and the Department of Agriculture in those individual cases where the consultation process results in differences of opinion on wetland identification and Swampbuster exemption determinations.
- o Continue the involvement of the Service at the National level in assisting the Department of Agriculture in rule making, developing agency procedures, and in deliberations leading to policy interpretations on implementation of the conservation provisions.

Another area you asked us to address is the effectiveness of Swampbuster. The Service has no firm evidence to indicate to what extent the provisions have reduced the loss of wetlands due to agricultural activities on a National level. Service personnel continue to observe wetland conversions for agricultural purposes. For example, drainage rates in North Dakota and Minnesota in 1987

appeared to be the highest in ten years. Swampbuster does not prohibit wetland conversion per se, and some producers have publicly stated that wetland drainage should be completed now before something happens that does restrict drainage. In these situations, there is no wetland conservation benefit arising out of Swampbuster. The lack of a compliance record for Swampbuster supports the notion that wetland benefits have yet to be realized.

You specifically asked me to explain why "type 1" wetlands are important to wildlife and to describe the impacts if these wetlands were to be exempted from Swampbuster. The term "type 1" wetlands is taken from Circular 39, a Service publication issued in 1954. Unfortunately, there is quite a bit of confusion with the popular use of the term "type 1" wetlands today. Circular 39 is an obsolete wetland classification system which the Service stopped using in 1979.

There is not a consistent equivalent for "type 1" wetlands in current classification systems. A narrow technical definition would restrict "type 1" to those that are only temporarily flooded.

Popular usage of the term "type 1" in relation to recent discussions on Swampbuster is broader than the strict technical definition and includes so-called "nuisance" spots in agricultural fields, such as ephemeral wetlands, temporarily flooded wetlands, saturated soils, and many seasonally flooded wetlands. Because of the technical difficulty of defining "type 1" wetlands in current wetland classification terms, today I will use a range of values which represent on one hand, the most narrow, highly technical definition and on the other hand, a more general, popular concept of "type 1" wetlands.

To illustrate the difficulty in understanding what we all think a "type 1" wetland is, one Service wetlands expert estimated that trained wetland specialists in the field typically identify about 20 percent more wetlands as "type 1" than strictly meet the technical definition, and well-informed persons typically include 80 percent more wetlands than strictly meet the definition. The potential margin for error in using "type 1" wetlands for administrative or regulatory purposes is very large.

"Type 1" wetlands are found throughout the Nation, often in association with other more permanently flooded wetlands. In the prairie pothole region of the Dakotas and Minnesota, "type 1" wetlands are an integral component of what are termed wetland complexes -- aggregations of various wetland types and associated upland habitats, providing a diversity of wildlife habitat. "Type 1" wetlands are relatively small generally ranging from less than 0.1 acre to over 10 acres in size. Most are a quarter acre or less in size.

Between 18-70 percent of all wetland acreage in the prairie pothole region is at stake. Between 1 million and 3.7 million wetland acres are involved. The wildlife values that would be associated with loss of even the low end of this range are staggering.

For example, "type 1" wetlands support between 15-56 percent of the mallard breeding population and between 20-63 percent of the pintail breeding population. Loss of breeding habitat will translate into a direct loss of production for these populations. The Service estimates a total breeding population of about 5.3 million dabbling ducks in the prairie pothole region of North and South Dakota, Minnesota and Montana. If the remaining "type 1" wetlands disappear, it is estimated that 20-60 percent reduction (1.0 - 3.2 million ducks) in this population will occur. In terms of the fall flight, this translates into a reduction of from 2.1 - 6.4 million ducks heading south each fall from the prairie pothole region of the United States.

Waterfowl migrating north in early spring use "type 1" wetlands filled with snow-melt water and maintained by frozen subsoils. Deeper water areas are still ice-covered during this period. These wetlands provide food to sustain northward migrating waterfowl and maintain fat reserves required for successful reproduction. The prairie potholes of the United States are staging areas and important stopover points for transient birds migrating into Canada. The overall fitness of Canadian waterfowl is dependent on feeding conditions along the migratory flyway.

Ducks are highly territorial during the breeding season requiring many separated territories. Many "type 1" wetlands provide much more breeding potential than an equivalent acreage of larger wetlands. There are over 167,000 acres of wetlands less than one-quarter acre in size, and almost all of these are "type 1" wetlands. This translates into a minimum of 670,000 potential breeding sites. Laying females satisfy protein demands by consuming invertebrates that are more abundant and more easily obtained in "type 1" wetlands than in deeper, more permanent wetlands. An abundance of these wetlands ensures an adequate food supply for ducklings. In terms of waterfowl biology, it is fair to say that one hundred one-acre wetlands are many times more valuable than a single 100-acre wetland.

The North American Waterfowl Management Plan, agreed to by the United States and Canada in 1986, recognizes that conservation of habitat is imperative if waterfowl are to be maintained. It concludes that "All other efforts will be in vain if the ongoing trend of habitat degradation is not reversed...." If "type 1" wetlands continue to disappear, there is little doubt that it will not be possible to maintain even the current, depressed populations of waterfowl on the continent.

Mr. Chairman, the Service urges you to resist an exemption of either "type 1" or "small" wetlands from Swampbuster. Wildlife values of the Nation's wetlands, particularly waterfowl production, would be seriously reduced. The administrative burden of regulatory definition and field identification of a class of wetlands for exemption from Swampbuster would be overwhelming and would compound existing confusion with the program.

Many wetlands are already exempted from Swampbuster under the regulations, including: wetlands for which conversion commenced prior to December 23, 1985; artificial wetlands; wet areas created

by a water delivery system or irrigation system; wetlands which can be farmed under natural conditions; conversions that would have only a minimal impact on the hydrological and biological aspects of wetlands; and wetlands converted by the actions of a third party.

The Service sincerely believes that there is little room for additional compromise in Swampbuster if we are to retain a workable wetland conservation provision and provide for a viable North American waterfowl population.

Finally, I would like to discuss some recommendations to improve Swampbuster implementation, on which you also asked our comments.

First, during the period of development of the final regulations, much confusion and misunderstanding has developed. For example, we understand that a subcommittee of the National Governors Association recently adopted a policy that the wetlands conservation provision should under no circumstances restrict farmers from maintaining historic drains. According to the final regulations, this is not an issue. Existing active drainage structures can be maintained, provided that they are not made deeper or wider and that no additional land is brought into production. We fully support this interpretation. Continuing discussions on potential changes to Swampbuster over a two-year period have added to the confusion as to what the regulations do and do not say. This must be overcome if Swampbuster is to work.

Second, Swampbuster should be implemented without further delay. Wetland determinations must be made on each farm where necessary. Farmers are confused and worried because determinations have not been made on their farms or because Swampbuster compliance procedures are not clearly understood. All of us charged to implement Swampbuster need to roll up our sleeves, carry this program to the farm, and explain to the farmer face-to-face where the wetlands are and which ditches can be maintained. Swampbuster cannot be administered successfully without intensive field work.

All the evidence available to the Service indicates that, if anything, implementation of the wetland conservation provision needs to be strengthened, rather than weakened, if it is to have a positive effect on conservation of wetland resources. Straightforward implementation will also help clear up the confusion and let farmers know where they stand.

Thank you for this opportunity to address the concerns of this Committee. I will be happy to answer any questions you or members of the Committee may have.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON
 AGRICULTURE, NUTRITION, AND FORESTRY
 WASHINGTON, DC 20510-8000

April 7, 1988

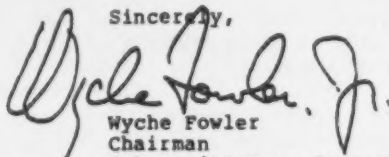
Mr. Ronald Lambertson
 Assistant Director
 Fish and Wildlife Service
 Department of the Interior
 18th and C St., N.W.
 Washington, D.C. 20240

Dear Mr. Lambertson:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
 Chairman
 Subcommittee on Conservation and
 Forestry

ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD
TO THE U.S. FISH AND WILDLIFE SERVICE

Hearing of the Subcommittee on Conservation and Forestry
On Oversight of Conservation Programs Administered by USDA
March 24, 1988

1. During the hearing, there was considerable discussion of "type 1" wetlands and "class 1" wetlands.

Please clarify the difference in the term "type 1" wetlands (under Circular 39 as well as the popular usage) and "class 1" wetlands (Stuart and Kantrud) referred to by Senator Conrad as having minimal waterfowl values. Please also explain the waterfowl values of these wetlands.

2. During the hearing, there was also considerable discussion of waterfowl populations.

Please list the top 5 waterfowl species in importance in hunter bag: nationally, by flyway, in North Dakota, in South Dakota, and in Minnesota, in 5 year increments since 1970.

Please list the breeding population of all ducks, and of mallards, pintails, blue-winged teal and green-winged teal each:

- for all surveyed areas, in 5 year increments, the long-term average (1955-present), and the past 15 year average.
- for North Dakota, South Dakota, Minnesota, Alberta, Saskatchewan, and Manitoba each, in 5 year increments, the long-term average (1955-present), and the past 15 year average.

Please explain the significance and relevance of the North Dakota waterfowl survey data cited during the hearing that indicates an increase in North Dakota duck populations over the last 30 years.



ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240



In Reply Refer To:
FWS/LS

MAY 6 1988

Honorable Wyche Fowler, Jr.
Chairman, Subcommittee on
Conservation and Forestry
Committee on Agriculture, Nutrition
and Forestry
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

With reference to your letter of April 7, enclosed are the responses of the U.S. Fish and Wildlife Service to the additional questions for the record of the March 24 oversight hearing before your subcommittee.

The added protection afforded to wetlands through the conservation provisions of the 1985 Food Security Act will greatly assist the United States in achieving its goals under the North American Waterfowl Management Plan.

Thank you for the opportunity to participate in your deliberations on this important issue. I hope this information is helpful. If you have further questions, please do not hesitate to contact me.

Sincerely,

FRANK DUNKLE
DIRECTOR

Enclosures

U.S. Fish and Wildlife Service
Responses to Questions for the Record
of the March 24, 1988, Hearing
Subcommittee on Conservation and Forestry

Question 1: During the hearing, there was considerable discussion of "type 1" wetlands and "class 1" wetlands. Please clarify the difference in the term "type 1" wetlands (under Circular 39 as well as the popular usage) and "class 1" wetlands (Stuart and Kantrud) referred to by Senator Conrad as having minimal waterfowl values. Please also explain the waterfowl values of these wetlands.

Answer: As this question denotes, there were three distinctly different wetland classification systems presented at the hearing. The classification systems included: 1) a system specific to the prairie pothole wetlands, developed by Robert E. Stewart and Harold A. Kantrud and explained in a 1973 publication addressing waterfowl in North Dakota; 2) a system explained by the U.S. Fish and Wildlife Service in a now obsolete 1954 publication known as "Circular 39," and 3) a "popular" (non-technical) wetland classification system also specific to the prairie pothole region. There are obvious differences in these classification systems, and they cannot be used interchangeably when discussing prairie pothole wetlands.

Explaining these differences in the context of the hearing also requires a description of the three wetland types in the prairie pothole region which were discussed at the hearing.

Ephemeral wetlands -- These are minor depressions which are flooded only for a few days very early in the spring and for short periods immediately after heavy summer rains. These basins usually do not support hydrophytic vegetation and oftentimes disappear in cropfields due to siltation and disturbance of bottom soils. Almost invariably these basins are dry before the end of April and pose no significant nuisance to farmers.

Temporary wetlands -- These wetlands are found in slightly deeper depressions and may be more recognizable in cultivated fields. In their natural condition these depressions would support hydrophytes. They hold water for an extended period of time during the spring and after heavy summer rains. The degree of nuisance these areas pose for the farmer is directly dependent upon the local rainfall conditions. During dry years these temporary basins are seeded with the main crop and may actually enhance production. In normal years these areas may be seeded with, or slightly after, the primary crop. During wetter periods, farmers may have to revert to alternate crops such as oats or flax. Crops planted in these basins are susceptible to flood damage as a result of heavy summer rains.

Seasonal wetlands -- These wetlands are flooded for well over 2 weeks during the growing season and support a predominance of hydrophytic vegetation in their natural condition. Again, the nuisance level of these wetlands to farmers is directly related to rainfall conditions. During the dryer years these wetlands can be seeded with the main crop without being drained. In normal years they can be planted to alternate crops. In wetter years farmers must abandon these basins completely. Both temporary and seasonal wetlands are cultivated whenever conditions permit for weed control and in hopes of crop production on the site for the next growing season. Some farmers, conscious of higher energy costs, elect to use temporary and seasonal wetlands as hay and/or pasture areas.

The differences in the three classification systems presented at the hearing can be best illustrated in tabular form by applying the systems to the three wetland types just discussed:

<u>WETLAND TYPE</u>	<u>CLASSIFICATION SYSTEM</u>		
	<u>CIRCULAR 39</u>	<u>STEWART/KANTRUD</u>	<u>POPULAR</u>
EPHEMERAL	TYPE 1	CLASS I	TYPE 1
TEMPORARY	TYPE 1/2	CLASS II	TYPE 1
SEASONAL	TYPE 3	CLASS III	TYPE 1

Both the Service's Circular 39 and the Stewart/Kantrud system are dependent upon vegetation and flood frequency and duration for wetland classification. Consequently, these systems distinguish the different wetland types similarly and with a fair degree of accuracy. While the popular system is dependent, in part, on the frequency and duration of flooding, cropping history also plays a part. This classification system includes as "Type 1" all wetlands which are regularly farmed or that pose a nuisance to farmers. Therefore, since even seasonal wetlands can be, and are, farmed regularly during dryer years in the prairie pothole region, "Type 1" under the popular classification would include ephemeral, temporary, and all but the wettest seasonal wetlands.

Given this explanation, it becomes clear that using technical information applicable to Class I wetlands (Stewart and Kantrud) to support claims made on the popular "Type 1" wetlands will lead to highly inaccurate assumptions. To identify the acreage within the popular "Type 1" classification requires the application of acreage information from Stewart and Kantrud Class I, II, and III wetlands. The 1973 Stewart and Kantrud publication entered into the hearing record by Senator Conrad identifies 65 percent of North Dakota's wetlands (1.5 million acres) as either Class I, II, or III, and 45 percent of these (675,000 acres) as under some form of cultivation during the data collection period (1967-1969).

As a result of the confusion at the hearing, the Service asked Mr. Harold Kantrud, co-author of the 1973 publication cited by Senator Conrad, to review the wetland classification and waterfowl value issue and provide a response. That response is entitled "Use of Frequently Tilled Wetland Basins by Waterfowl and Aquatic Birds in the Dakotas" and is attached in its entirety for the record. This paper clarifies the classification issue by emphasizing that Class I and the dryer of the Class II wetlands are farmed almost annually with no special activity by the farmer. While the wetter of the Class II and III wetlands are regularly farmed, they may pose a problem or "nuisance" to early spring planting.

The attached paper by Kantrud also emphasizes the fact that all of these wetland types, even the small ephemeral wetlands, play a key role in waterfowl migration, pairing and breeding. Because ephemeral wetlands are flooded for only brief periods, they are of only limited value to waterfowl. However, when flooded, they are heavily used, particularly during early spring migration, just as thawing is beginning and invertebrates are becoming active and available for feeding waterfowl, and immediately after heavy storm events when terrestrial earthworms are forced to the surface and provide a heavily utilized source of proteins for laying hens.

Temporary and seasonal wetlands provide isolation for breeding pairs of waterfowl and a valuable source of invertebrates for feeding during the early nesting season. These basins with natural vegetation or crop residue provide a heavily utilized source of animal protein during spring migration. They are spring staging habitat for waterfowl species which normally nest farther north and represent a major habitat for millions of migratory shorebirds.

Question 2: During the hearing, there was also considerable discussion of waterfowl populations. Please list the top 5 waterfowl species in importance in hunter bag: nationally, by flyway, in North Dakota, in South Dakota, and in Minnesota, in 5 year increments since 1970.

Please list the breeding population of all ducks, and of mallards, pintails, blue-winged teal and green-winged teal each:

For all surveyed areas, in 5 year increments, the long-term average (1955-present), and the past 15 year average.

For North Dakota, South Dakota, Minnesota, Alberta, Saskatchewan, and Manitoba each, in 5 year increments, the long-term average (1955-present), and the past 15 year average.

Please explain the significance and relevance of the North Dakota waterfowl survey data cited during the hearing that

indicates an increase in North Dakota duck populations over the last 30 years.

Answer: Attached are several tables which provide the data requested in the first part of this question.

The figures cited during the hearing are from the U.S. Fish and Wildlife Service's Waterfowl Breeding Population Surveys for the past 30 years for North Dakota. These are the same figures which, when used collectively with those for the rest of the nation, indicate a downward trend in North American waterfowl populations.

During the hearing, the statement was made that North Dakota waterfowl populations were 40 percent higher in the last 10 years (1978-1987) than in a 10-year period ending 20 years ago (1958-1967). On the surface, the North Dakota figures support this claim. However, there are several underlying points which prevent this comparison from being translated into an unqualified statement that waterfowl are better off now than 30 years ago. The most important of these is that the numbers quoted at the hearing represent all ducks, including species which do not accurately reflect the condition of the ephemeral, temporary, and seasonal wetland types which received most of the attention at the hearing.

For instance, these figures include a group of ducks commonly referred to as diving ducks, such as scaup and ringneck, which generally utilize deeper wetland areas for their mating and breeding activities. Using the same period of comparison, diving ducks have increased by 144 percent in North Dakota. Such increases mask population declines in species more ecologically adapted to the ephemeral, temporary and seasonal wetlands discussed at the hearing.

One such species, whose mating and breeding habits can be tied almost exclusively to these wetland types, is the pintail. This species' numbers have fallen to seriously low levels in recent years. Again using the 10-year periods of comparison, pintail populations have experienced a 21 percent decline in North Dakota.

Similar declines are apparent with mallard, as well as blue-winged and green-winged teal. This is further supported by the attached presentation of species in the hunter bag. Pintail, which used to be a prominent species in the bag, has fallen from National significance. This decline is primarily the result of habitat loss/degradation from agricultural activity in important breeding areas such as the prairie pothole region.

Another relevant point is that isolating on North Dakota population figures is not representative of the status of the continental waterfowl population. The fact that some of these species are currently not as bad off in North Dakota as across the continent is due in part to favorable local climatic conditions (more surface water) in that state in recent years,

coupled with extremely dry conditions in the Canadian portion of the prairie pothole region.

This further emphasizes the importance of North Dakota's wetlands, as well as those of any other state or province, to the productivity of the prairie pothole region and to the future of our continental waterfowl populations. During any year, the wetlands of a specific area such as Minnesota, North Dakota, or the Canadian provinces may have to support more than a proportional share of the breeding waterfowl population due to unfavorable conditions in another area.

Finally, recruitment, or nesting success, is another factor to be considered in waterfowl population trends. In recent years, nesting success in the prairie pothole region has declined significantly, to critical levels. This reduction is directly related to the loss of ephemeral, temporary and seasonal wetlands, and to the concentration of nesting waterfowl into a few large areas with very little adjacent cover habitat. As nests become more concentrated, egg predation success is greatly increased.

USE OF FREQUENTLY TILLED WETLAND BASINS BY WATERFOWL AND AQUATIC
BIRDS IN THE DAKOTAS

Harold A. Kantrud, Gary L. Krapu, and G.L. Swanson, Northern
Prairie Wildlife Research Center, Jamestown, North Dakota 58401.

Prairie wetlands are of extreme importance to North American waterfowl populations (Krapu and Duebbert in press). The numbers of breeding, molting, staging and migrating waterfowl observed in these basins, and the foods consumed by these birds in various stages of their life cycle have received considerable attention by wildlife biologists. A current review of these topics is available (Swanson and Duebbert in press). Temporary, seasonal, and semipermanent wetlands (Stewart and Kantrud 1971) are the principal types of wetlands used by most species of waterfowl that breed in the Dakotas and throughout the Prairie Pothole Region. For example, these basins collectively supported 81% of the breeding waterfowl population during 1967-1969 in North Dakota (Stewart and Kantrud 1973).

Much confusion has arisen because of the different systems used to classify prairie wetlands. The system of Martin et al. (1953) (republished in U.S. Fish and Wildlife Service Circular 39 (Shaw and Fredine 1956) is a generalized classification now considered obsolete because of recent advances in hydrology and our knowledge of the moisture requirements of various hydrophytes. Tilled wetlands are notoriously difficult to classify by analysis

of their vegetative communities, because cultivation often is so intense that little or no vegetation remains. However, recent advances in pedology now allow soil scientists to quite accurately determine the long-term moisture regimes leading to the development of various hydric soils, and to recognize hydric soils, even in basins that have been drained for many years.

The system of Martin et al. (1953) is seriously flawed because the few plant indicators listed for a wetland type often do not occur under the water regime listed for that wetland type. In addition, some listed plants are common to several of their wetland types. For example, "bulrushes" may occur in Types 3, 4, and 5 of Martin et al. (1953), whereas in the more modern classifications (Stewart and Kantrud 1971; Cowardin et al. 1979), the species of bulrush would be identified, and used as indicator species or dominance types at the appropriate level of classification.

With due regard to the problems inherent in the Martin et al. (1953) classification system, a rough cross-correlation of the wetland types can be made:

Martin et al. (1953)	Stewart and Kantrud (1971)	Cowardin et al. (1979)
Type 1	Class 1 Ephemeral and Class 2 Temporary Ponds	Temporarily flooded emergent wetland
Type 2	Class 2 Temporary Ponds	Saturated emergent wetland
Type 3	Class 3 Seasonal Ponds and Lakes	Seasonally flooded emergent wetland
Type 4	Class 4 Semipermanent Ponds and Lakes	Semipermanently flooded emergent wetland and aquatic bed
Type 5	Class 4 Semipermanent and Class 5 Permanent Ponds and Lakes	Permanently flooded and intermittently exposed aquatic bed and unconsolidated bottom

Both Stewart and Kantrud (1971) and Cowardin et al. (1979) consider Martin et al. (1953) Type 1 wetlands to be primarily

temporarily flooded (wet meadow) wetland. The former authors also consider Type 1 wetland to include their ephemerally flooded Class 1 (low prairie) habitat, merely because Martin et al. (1953) stated that some such wetlands "usually develop little or no wetland vegetation." All the plants listed for Type 1 wetlands by Martin et al. (1953) that occur in the glaciated prairies are wet meadow species of Stewart and Kantrud (1971).

It is unfortunate that the term "waterlogged soil" was used by Martin et al. (1953) to describe the water regime of fresh meadows (Type 2 wetlands) which they describe as occupying "potholes", "sloughs", or "farmland sags" and dominated by, among other plants, prairie cordgrass. In attempting to cross-correlate the two classification systems, Stewart and Kantrud (1971) elected to emphasize the plants, and the terms "potholes" and "sloughs", and so consider Type 2 wetlands the same as their temporary (Class 2) basin wetlands. Cowardin et al. (1979), however, elected to emphasize the hydrological term "waterlogged soil", and consider Martin et al. (1953) Type 2 wetlands as emergent wetland with the same saturated water regime as found in bogs. In the Stewart and Kantrud (1971) classification, zones of vegetation found where groundwater saturates the soil throughout the growing season are termed fens. Needless to say, such soil would not be cultivable.

Wetlands frequently tilled throughout the basin are almost invariably ephemeral, temporary, or seasonal wetlands of Stewart

and Kantrud (1971) or temporarily and seasonally flooded wetland of Cowardin et al. (1979). An exception occurred during the drought of the 1930's when even the bottoms of many of the current-day fishing lakes in the Dakotas were cultivated. The temporarily flooded (wet meadows) and seasonally flooded (shallow marsh)-borders of most wetlands located in cropfields are also frequently tilled.

The ephemeral wetland class of Stewart and Kantrud (1971) does not support hydrophytes. This is low-prairie habitat not recognized as wetland by Cowardin et al. (1979). Martin et al. (1953) also stated that these basins, when submerged only temporarily "usually develop little or no wetland vegetation." Ephemeral basins are found mainly in grassland, and virtually disappear in cropland because of siltation and disturbance of bottom soils. These extremely shallow basins pose no nuisance to farmers, because even if they remain recognizable as such in cropland, are almost invariably dry before the end of April. Surface water normally disappears from these basins within a few days after the ground thaws. These basins are also of little value to breeding waterfowl, because they are usually dry before the birds arrive. An exception to this is when heavy summer rains cause ponded water to occur in these basins for a few hours or days. This forces terrestrial earthworms to the surface where they may be eagerly fed upon by laying hens in search of protein sources.

Thus the most common wetlands that are regularly cultivated and recognizable in cropland are of the water regimes temporarily and seasonally flooded. Temporarily flooded basins and the temporarily flooded borders (wet meadows) of more permanent wetlands are seeded in with the main crop during dry years, with or slightly after the main crop during normal water years, and later to alternate crops such as oats or flax during wet years. Some are kept cultivated merely for weed control. Some farmers, conscious of the higher energy costs associated with tilling heavy wet meadow soils, the saline conditions found in some wet meadow soils, or the chances of losing crops seeded in wet meadows to flooding caused by heavy summer rains, use these basins for hay. If of sufficient size, some wet meadows are fenced and used for pasture.

Seasonally flooded basins or the shallow marsh borders of more permanent wetlands are also cropped whenever water conditions permit, but at much greater risk to loss of crops to flooding. These basins are seeded in with the main crop only during dry years, but many can be seeded later in the growing season to alternate crops during normal water years. During wet years, these basins cannot be farmed. Farmers with powerful equipment often cultivate seasonal wetlands in the fall, in hopes that they may be used for cropland the following spring. Some farmers, especially those with livestock, use seasonal wetlands for hayland, because the basins are highly productive of nutritious native hydrophytic grasses and sedges. Some seasonal wetlands

have been planted to water-tolerant domestic forage grasses such as reed canary grass (*Phalaris arundinacea*). If of sufficient size, some seasonal wetland basins are fenced and used for pasture.

Wetland use by waterfowl may be expressed in various ways which can influence the results. Use expressed on an area basis results in high relative values for small basins, whereas use expressed on a wetland unit basis results in relatively high values for large basins, even though many large basins have large central areas of open water which may receive little use. Use of basins by breeding waterfowl has also been expressed in pairs per unit length of shoreline. This also tends to result in high values for small basins. Waterfowl use of basins has also sometimes been expressed in terms of basin area without regard to the presence or absence of surface water (Kantrud and Stewart 1977). This is done in attempts to define the value of an entire wetland class, not only those basins within a class that happen to contain ponded water at any particular time. With the exception of diving ducks, the majority of all marsh and aquatic birds that nest in the Prairie Pothole Region depend on temporarily flooded (wet meadow) and seasonally flooded (shallow marsh) habitats to obtain foods in the early spring. This habitat occurs as discrete basins or as vegetative zones peripheral to more permanent wetlands.

Temporary wetland basins.

The primary function of these wetlands is to provide isolation for breeding pairs and invertebrate foods for waterfowl early in the nesting period. The rapid warming of these shallow wetlands in the spring results in early development of invertebrate populations (Swanson et al. 1974). Temporary basins, especially those containing flooded crop residues, receive considerable use by spring migrant waterfowl, but are usually dry during the fall migration period. Nevertheless, these basins occasionally are filled by fall rains; at this time considerable use by fall migrant dabbling ducks can occur.

Up to 6.8% of the South Dakota breeding population may be found on these basins when water conditions are relatively good and the water ponded in these basins comprises about 4% of the surface water available in all wetlands (Ruwaldt et al. 1979). About 2-4% of the breeding waterfowl population was observed on temporary wetlands in North Dakota during 1967-69 (Stewart and Kantrud 1973). For both of these studies, the proportional use of these basins is underestimated because many of the intensively tilled wetlands could not be classified as to water regime. These basins, which were undoubtedly tilled temporary and seasonal wetlands, supported an additional 4-7% of the population.

Temporary basins are used only by breeding dabbling ducks (Anatini) in the Dakotas. Use of these basins decreases greatly during relatively dry springs as ponded water may be absent or maintained for only a few weeks. In South Dakota, greatest pair densities on these wetlands, on the basis of both basin area and basin unit were, in decreasing order of magnitude, found for blue-winged teal (Anas discors), northern pintail (A. acuta), mallard (A. platyrhynchos), northern shoveler (A. clypeata), green-winged teal (A. crecca) and gadwall (A. strepera) (Ruwaldt et al. 1979).

Very similar results were reported by Kantrud and Stewart (1977) for temporary basins in North Dakota. They also observed use of these basins by small numbers of American wigeon (A. americana). They found that, on the basis of area of basins with surface water, temporary wetlands showed greater use by dabbling ducks (364.2 pairs/km^2) than any other wetland class. But when all basins were considered without regard to the presence or absence of surface water, temporary basins supported 126.6 pairs/km^2 . This was only about 47% and 79% of the dabbling duck density found on seasonal and semipermanent wetlands, respectively.

Cowardin et al. (1988 in press, and unpubl. data) used wetland data from the late 1970's to early 1980's and waterfowl pair counts from the mid 1980's to estimate the density of five

common species of dabbling ducks among various classes of wetland basins during a wet year in the Dakotas. These densities were applied to estimates of wetland abundance derived from a sample of 4 mi² plots and are presented in Table 1. Note especially that the mallard and northern pintail, both early-nesting species, show greatest use of temporary wetlands. This is in agreement with the food habits studies of Swanson et al. (1985) for the mallard, and Krapu (1974a, 1974b) for the northern pintail. These studies showed that temporary wetlands are a major source of animal protein needed by nesting hens to produce clutches of viable eggs. Poor quality diets lead to reduced clutch and egg size, laying rate, and number of nesting attempts (Eldridge and Krapu 1988). That mallard breeding populations correlate better with acreage of water 6 inches or more deep than with acreages of water 12 or 18 inches or more deep provides further evidence of the importance of shallow water to early-nesting species (Stewart and Kantrud 1964, unpubl).

Wetlands of even lesser water permanence than temporary (the ephemeral wetlands of Stewart and Kantrud 1971) also can be an important source of animal protein. While the general use of these basins by breeding pairs is small, the presence of water for only a few days in ephemeral wetlands can cause an emergence of terrestrial earthworms (*Oligochaeta*) highly attractive as foods for laying female dabbling ducks (G. Swanson, NPWRC, pers. comm.).

Temporary wetland habitat provides important spring staging habitat for arctic-nesting geese. These birds often stop in the Prairie Pothole Region for extended periods during spring migration to fatten while enroute to their breeding grounds (Alisauskus 1988). Availability of shallow ponds in open, agricultural landscapes allows the birds to disperse widely, thereby reducing or eliminating potential hazards from disease, particularly avian cholera (G. Krapu, NPWRC, pers. comm.). Stewart and Kantrud (1966, unpubl.) rated cultivated wetlands in cropland excellent for spring migrant waterfowl during wet years, fair during average years, and poor during dry years. In the Rainwater Basin of southcentral Nebraska, where most of the shallow wetlands have been drained, overcrowded populations of geese and ducks have suffered high mortality from avian cholera during spring migration (Friend 1981). The deeper basins that farmers are unable to cultivate during summer and fall remain ice-covered during this period, and are little used by migrant waterfowl.

Temporary wetlands also provide a major habitat for millions of arctic- and subarctic-nesting shorebirds that pass through the Prairie Pothole Region each spring. Ten species of shorebirds studied in North Dakota foraged primarily on crustaceans and insects in shallow wetlands during spring migration (Eldridge and Krapu in press). The highly variable water conditions that exist across the Region emphasizes the need to maintain a widely dispersed and intact base of shallow basins to serve this

valuable function, as deep water does not provide an available invertebrate food source for birds that are morphologically adapted to feed in shallow water.

There is a fair amount of information on the use of prairie wetlands by the 22 commonest species of marsh and aquatic birds, other than waterfowl, in North Dakota during the nesting season (Table 2.). Nearly two thirds of the total breeding population were found on semipermanent wetlands, and all species used this wetland class. For 11 species, over half the population was found on this class. Seasonal wetlands were used by 20 species and supported about one third of the total censused population. From 53 to 64% of the population of seven species occupied seasonal wetlands. Temporary and undifferentiated tillage wetland basins were of little importance to the breeding birds listed.

Densities are expressed in pairs per km² in Table 3. These are crude measurements of density because they are based on the entire wetland, rather than on specific zones or plant communities used by the birds. On this basis, highest densities of birds occurred on semipermanent wetlands. These wetlands are especially attractive to American coot and black tern. Temporary wetlands supported high densities of red-winged blackbirds and savannah sparrows. Killdeer and marbled godwit were also found in greatest densities on these wetlands, although most of the use was of shoreline areas. Horned grebe, eared grebe and willet use was highest on seasonal wetlands. Agricultural use of wetlands

obviously decreased their value to most species except for the American avocet and Wilson's phalarope which reached highest densities on wetlands with frequently tilled soils.

Information on frequency of use of temporary, seasonal and semipermanent wetlands was gathered for 13 selected non-waterfowl species in South Dakota in 1975 and 1976 (Weber et al. 1982). These data are shown in Table 4. Among the wetland classes listed, highest frequencies for 8 species occurred in semipermanent wetlands, which were used by 92% of the species studied. Seasonal wetlands were used by 85% of the species, and most frequently by the black-crowned night heron and Wilson's phalarope. Temporary wetlands were used by 54% of the species and most frequently by the American avocet, lesser yellowlegs and marbled godwit.

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Table 1. Percent of the breeding population of five common species of dabbling ducks expected to occupy various classes of prairie wetlands in the Dakotas during a wet year.

	<u>Temporary^a</u>	<u>Seasonal</u>	<u>Semipermanent</u>	<u>Lake^b</u>
Area (%)	4.3-8.5	16.7-39.1	31.9-35.4	20.5-43.5
No. of basins (%)	25.4-42.3	52.8-60.4	4.3-13.7	0.5-0.6
<u>Species</u>				
Mallard	9.9-13.4	33.3-53.2	31.4-50.6	2.0-6.1
Gadwall	6.7-10.6	24.1-45.1	37.8-52.0	6.5-17.2
Blue-winged Teal	4.3-6.3	30.3-52.8	37.0-54.6	3.8-10.8
Shoveler	7.7-11.2	28.8-49.1	37.2-56.2	2.5-7.3
Northern Pintail	13.3-17.1	36.1-54.7	26.6-45.3	1.6-5.2

^a Includes small amounts of wetland with saturated water regime.

^b Includes all basins with deepest portion classified in the lacustrine system.

Table 2. Distribution (%) of marsh and aquatic birds in temporary (Class 2), seasonal (Class 3), semipermanent (Class 4) and undifferentiated tillage (Class T) wetlands in North Dakota in 1968-69 (from Kantrud and Stewart 1984).^a

Species	Wetland class			
	2	3	4	T
Horned grebe				
(<u>Podiceps auritus</u>)		64	36	
Eared grebe				
(<u>Podiceps nigricollis</u>)		54	34	
Western grebe				
(<u>Aechmophorus occidentalis</u>)			5	
Pied-billed grebe				
(<u>Podilymbus podiceps</u>)		23	68	
Black-crowned night heron				
(<u>Nycticorax nycticorax</u>)		6	75	
American bittern				
(<u>Botaurus lentiginosus</u>)	2	30	69	
Northern harrier				
(<u>Circus cyaneus</u>)		23	77	
Virginia rail				
(<u>Rallus limicola</u>)		14	86	

Sora

(<u>Porzana carolina</u>)	1	45	54
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American coot

(<u>Fulica americana</u>)	tr ^b	24	72
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Killdeer

(<u>Charadrius vociferus</u>)	4	53	39
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Willet

(<u>Catoptrophorus semipalmatus</u>)	2	56	39
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Marbled godwit

(<u>Limosa fedoa</u>)	3	57	37
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American avocet

(<u>Recurvirostra americana</u>)		38	47	7
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Wilson's phalarope

(<u>Phalaropus tricolor</u>)	4	60	30	3
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Black tern

(<u>Chlidonias niger</u>)	tr	25	72
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Marsh wren

(<u>Cistothorus palustris</u>)		9	91
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Common yellowthroat

(<u>Geothlypis trichas</u>)		48	52
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Yellow-headed blackbird

(<u>Xanthocephalus xanthocephalus</u>)	tr	6	94
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Red-winged blackbird

(<u>Agelaius phoeniceus</u>)	2	61	35
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Savannah sparrow

(<u>Passerculus sandwichensis</u>)	10	49	38
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Total birds	1	33	63	tr.
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^aTotal percentages across rows subtracted from 100 = the proportion of populations of these species that used wetland classes not covered in this report.

^btr = <0.5%.

Table 3. Density (pairs/km²) of breeding marsh and aquatic birds in temporary (Class 2), seasonal (Class 3), semipermanent (Class 4) and undifferentiated tillage (Class T) wetlands in North Dakota in 1965 and 1968-1969 (from Kantrud and Stewart 1984).

Species	Wetland class			
	2	3	4	T
Horned grebe		1.4	0.6	
Eared grebe		3.9	1.9	
Western grebe			0.2	
Pied-billed grebe		5.4	11.9	
Black-crowned night heron		0.4	4.2	
American bittern	5.8	3.3	5.8	
Northern harrier		0.6	1.5	
Virginia rail		0.4	1.8	
Sora	10.1	12.9	12.6	
American coot	25.2	73.8	180.5	
Piping plover				
(<i>Charadrius melodus</i>)			0.2	
Killdeer	20.6	7.2	5.3	
Willet	10.1	12.3	7.0	
Marbled godwit	10.1	6.9	3.6	
American avocet		3.2	3.2	26.8
Wilson's phalarope	45.4	28.9	11.5	62.5
Black tern	5.8	19.0	44.9	

Marsh wren		4.9	43.8	
Common yellowthroat		7.9	7.8	
Yellow-headed blackbird	11.1	18.1	253.3	
Red-winged blackbird	300.0	99.8	106.8	
Savannah sparrow	188.9	21.5	15.4	
Total	633.1	431.8	723.8	89.3

Table 4. Frequency of occurrence of 13 selected species of marsh and aquatic birds in temporary (Class 2), seasonal (Class 3) and semipermanent (Class 4) wetlands in South Dakota during May and June surveys in 1975-1976 (from Weber et al. 1982).

Species	Wetland class		
	2	3	4
American bittern		0.8	6.3
Great blue heron			1.2
Green-backed heron			0.4
Black-crowned night heron		3.3	1.2
Sora		3.4	5.5
American avocet	1.4	0.4	
Lesser yellowlegs	2.7	1.9	1.6
Willet	4.1	3.4	4.7
Marbled godwit	4.1	1.5	2.3
Wilson's phalarope	8.2	9.8	7.4
Black tern		1.1	6.3
Yellow-headed blackbird	2.7	6.8	37.5
Red-winged blackbird	37.0	51.9	74.2

Top 5 Duck Species* in the Hunter Bag

	ND	SD	MN	Atlantic Flyway	Mississippi Flyway	Central Flyway	Pacific Flyway	Nation
1970								
1.	MLRD 52.4%	MLRD 54.5%	MLRD 31.8%	MLRD 18.6%	MLRD 39.6%	MLRD 37.5%	MLRD 30.1%	MLRD 33.3%
2.	GDWL 17.3%	GDWL 11.6%	RNNK 12.1%	WDDK 18.5%	WDDK 10.9%	GWTL 14.1%	PNTL 28.2%	PNTL 12.0%
3.	PNTL 8.3%	GWTL 7.4%	LSCP 10.5%	BLDK 16.0%	GWTL 8.5%	GDWL 10.7%	GWTL 12.9%	GWTL 11.1%
4.	WIGN 7.0%	WIGN 6.4%	BWTL 9.9%	GWTL 9.1%	BWTL 6.2%	PNTL 9.8%	WIGN 11.4%	WDDK 6.8%
5.	BWTL 5.3%	BWTL 5.9%	GWTL 7.3%	RNNK 6.2%	GDWL 5.6%	WIGN 7.9%	SHVL 6.3%	WIGN 6.6%
1975								
1.	MLRD 45.5%	MLRD 46.1%	MLRD 27.6%	MLRD 22.2%	MLRD 38.3%	MLRD 31.5%	MLRD 28.3%	MLRD 32.4%
2.	GDWL 14.3%	GDWL 10.3%	WDDK 16.7%	WDDK 16.7%	WDDK 12.4%	GWTL 18.3%	PNTL 25.7%	PNTL 10.2%
3.	PNTL 10.2%	GWTL 10.3%	RNNK 14.4%	BLDK 14.4%	BWTL 10.7%	PNTL 10.0%	GWTL 15.5%	GWTL 12.4%
4.	BWTL 8.5%	WIGN 8.4%	BWTL 15.8%	GWTL 7.0%	GWTL 9.3%	GDWL 9.8%	WIGN 10.5%	WDDK 7.8%
5.	WIGN 5.8%	BWTL 7.5%	GWTL 7.0%	RNNK 6.8%	GDWL 5.5%	BWTL 8.5%	SHVL 7.5%	BWTL 7.2%
1980								
1.	MLRD 56.9%	MLRD 51.6%	MLRD 31.6%	MLRD 22.5%	MLRD 39.8%	MLRD 37.4%	MLRD 33.8%	MLRD 35.3%
2.	GDWL 11.9%	GDWL 11.3%	RNNK 15.7%	WDDK 23.8%	WDDK 13.7%	GWTL 14.2%	PNTL 19.8%	GWTL 11.1%
3.	WIGN 7.3%	GWTL 9.0%	WDDK 15.5%	BLDK 18.0%	GWTL 9.0%	PNTL 9.2%	GWTL 15.6%	WDDK 10.3%
4.	PNTL 4.7%	PNTL 5.8%	GWTL 6.0%	GWTL 6.9%	BWTL 7.0%	GDWL 9.1%	WIGN 10.9%	PNTL 8.3%
5.	GWTL 4.4%	WIGN 4.5%	LSCP 5.8%	RNNK 5.1%	GDWL 6.4%	WIGN 8.6%	SHVL 4.7%	WIGN 6.7%
1985								
1.	MLRD 55.3%	MLRD 43.7%	MLRD 28.0%	MLRD 22.5%	MLRD 36.2%	MLRD 33.6%	MLRD 42.0%	MLRD 35.0%
2.	GDWL 10.9%	GDWL 16.1%	RNNK 18.9%	WDDK 17.8%	WDDK 12.4%	GWTL 15.3%	GWTL 15.2%	GWTL 10.8%
3.	WIGN 6.2%	GWTL 8.0%	WDDK 12.9%	BLDK 10.4%	BWTL 10.6%	GDWL 10.3%	PNTL 12.8%	WDDK 8.7%
4.	LSCP 6.2%	WIGN 6.6%	LSCP 10.9%	GWTL 7.9%	GWTL 7.8%	BWTL 8.2%	WIGN 9.9%	BWTL 7.1%
5.	PNTL 4.5%	SHVL 4.4%	GWTL 6.8%	LSCP 5.7%	LSCP 7.2%	WIGN 7.0%	SHVL 5.9%	LSCP 5.1%
* MLRD: Mallard PNTL: Pintail BWTL: Blue-winged Teal WDDK: Wood Duck WIGN: Wigeon RNNK: Ring-necked Duck								
GDWL: Gadwall Green-winged Teal LSCP: Lesser Scaup BLDK: Black Duck SHVL: Shoveler								

Breeding population estimates from the May Waterfowl Survey (in 1000's)

All Ducks							
Year	AB	SK	MB	ND	SD	MN*	Total Survey Area
1955	10894.7	16348.5	3213.6	2860.3	1907.3	—	48349.3
1960	8531.8	9402.9	3439.4	1951.8	1234.1	—	38746.1
1965	7316.7	6666.7	3202.9	2938.2	1666.7	—	34110.9
1970	8054.5	13907.7	5497.7	3921.6	2488.2	371.0	47289.4
1975	9976.4	13133.2	3304.9	3580.4	1746.2	376.0	44444.2
1980	8102.2	10267.0	3885.6	2894.6	1360.6	640.0	45337.7
1985	5732.5	8275.8	2384.1	2458.9	1765.0	602.4	33004.7
Long Term Ave.	7950.2	10014.1	3294.8	2950.1	1972.1	—	41012.3
1955-87	7950.2	10014.1	3294.8	2950.1	1972.1	—	41012.3
15-Year Ave.	8771.6	10401.1	3478.0	2775.3	2029.5	546.1	41659.8
1973-87	8771.6	10401.1	3478.0	2775.3	2029.5	546.1	41659.8

*The Total Survey Area includes most, or parts of, Alberta (AB), Saskatchewan (SK), Manitoba (MB), North Dakota (ND), South Dakota (SD), Montana (MT), the Northwest Territories, and Alaska. It does not include Minnesota (MN) where surveys are conducted independent of the Service's May Waterfowl Survey.

Breeding population estimates from the May Waterfowl Survey (in 1000's)

Mallard

<u>Year</u>	<u>AB</u>	<u>SK</u>	<u>MB</u>	<u>ND</u>	<u>SD</u>	<u>MN*</u>	<u>Total Survey Area</u>
1955	2817.1	4302.0	808.6	486.9	387.1	—	10008.6
1960	1938.3	3516.6	746.6	308.5	203.5	—	7844.9
1965	1463.8	1474.7	640.6	455.8	347.1	—	5528.2
1970	2210.1	3796.2	1432.9	765.8	464.7	116.0	10003.0
1975	2049.6	2800.4	615.6	566.6	354.3	89.0	7608.9
1980	1813.8	2645.6	816.0	485.4	338.8	167.0	7410.0
1985	1331.6	1499.2	476.6	361.4	310.1	222.8	4888.0
Long Term Ave. 1955-87	2069.2	2803.6	769.0	483.9	381.3	—	7757.9
15-Year Ave. 1973-87	1701.1	2425.1	685.3	484.2	372.7	156.1	6808.7

*The Total Survey Area includes most, or parts of, Alberta (AB), Saskatchewan (SK), Manitoba (MB), North Dakota (ND), South Dakota (SD), Montana (MT), the Northwest Territories, and Alaska. It does not include Minnesota (MN) where surveys are conducted independent of the Service's May Waterfowl Survey.

Breeding population estimates from the May Waterfowl Survey (in 1000's)

Blue-winged Teal

<u>Year</u>	<u>AB</u>	<u>SK</u>	<u>MB</u>	<u>ND</u>	<u>SD</u>	<u>MN*</u>	<u>Total Survey Area</u>
1955	1352.5	2772.1	552.0	820.8	769.6	—	6435.9
1960	1023.9	1374.5	788.1	466.2	494.5	—	4303.1
1965	758.4	1149.1	783.0	935.2	757.0	—	4628.0
1970	496.0	2322.0	1085.0	744.7	753.6	158.4	5633.6
1975	1395.4	2727.1	426.5	1126.7	538.7	146.6	6440.6
1980	1202.5	1477.9	615.5	888.5	483.3	320.0	4903.0
1985	709.0	1526.2	265.1	547.0	604.5	292.2	3756.2
Long Term Ave. 1955-87	932.2	1576.3	631.0	775.1	757.8	—	4850.0
15-Year Ave. 1973-87	991.8	1447.6	484.2	732.5	725.2	231.6	4556.0

*The Total Survey Area includes most, or parts of, Alberta (AB), Saskatchewan (SK), Manitoba (MB), North Dakota (ND), South Dakota (SD), Montana (MT), the Northwest Territories, and Alaska. It does not include Minnesota (MN) where surveys are conducted independent of the Service's May Waterfowl Survey.

Breeding population estimates from the May Waterfowl Survey (in 1000's)

Green-Winged Teal

<u>Year</u>	<u>AB</u>	<u>SK</u>	<u>MB</u>	<u>ND</u>	<u>SD</u>	<u>MN*</u>	<u>Total Survey Area</u>
1955	735.7	524.7	87.7	39.0	25.7	—	2076.1
1960	753.4	262.4	39.9	0.0	0.0	—	1629.7
1965	516.1	225.8	101.5	12.1	0.0	—	1526.0
1970	496.4	589.8	228.9	81.4	78.4	—	2259.4
1975	658.6	463.7	154.8	95.4	81.7	—	2038.8
1980	561.3	905.4	356.3	120.2	99.3	—	2925.4
1985	440.4	343.3	164.8	80.4	42.6	—	1872.9
Long Term Ave.							
1955-87	689.8	456.8	212.3	47.0	37.4	—	2160.9
15-Year Ave.							
1973-87	695.3	538.1	291.1	63.1	53.5	—	2399.9

*The Total Survey Area includes most, or parts of, Alberta (AB), Saskatchewan (SK), Manitoba (MB), North Dakota (ND), South Dakota (SD), Montana (MT), the Northwest Territories, and Alaska. It does not include Minnesota (MN) where surveys are conducted independent of the Service's May Waterfowl Survey.

SYNOPSIS OF POINTS MADE IN
ECOLOGICAL DISTRIBUTION OF BREEDING WATERFOWL POPULATIONS
IN NORTH DAKOTA
by
STEWART and KANTRUD
(1973)

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- o The Prairie Pothole Region(PPR) includes 51.5% of North Dakota, but supports approximately 84% of the State's breeding waterfowl.
- o The Coteau Region(CR) includes 11.6% of North Dakota, and supports approximately 10% of the State's breeding waterfowl.

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- o In 1967, ND had approximately 3.2 million acres of wetlands, consisting of 2.5 million acres of natural wetlands and .7 million acres of man-made wetlands(reservoirs, impoundments, ditches, etc.).
- o In 1967, ND had approximately 3 million basins, consisting of 2.7 million natural basins and .3 million man-made basins.
- o In 1967, the PPR of ND had 2.2 million acres of wetlands(2.0 million acres of natural wetlands and .2 million acres of man-made wetlands).

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- o IN the PPR, 29% of the area and 52% of the numbers of wetlands have tilled bottoms. In other words, almost 1/3 of the wetland acreage is cropped in this region and most of these are the smaller wetlands.
- o In the PPR, approximately 80% of the breeding waterfowl were observed in natural lakes and ponds.

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- o Table 2 is applicable only to the PPR.
- o Class I, II, and III wetlands include 65% of the wetland acres in the PPR(29% with tilled bottoms and 36% with natural bottoms).
- o Class I, II, and III wetlands include 94% of the wetland basins in the PPR(52% with tilled bottoms and 36% with natural bottoms).

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- o In the PPR, 84% of the breeding waterfowl were observed in natural wetland basins, with 73% found in basins with untilled bottoms and 11% found in basins with tilled bottoms. In other words, waterfowl seem to prefer the natural basins, since almost 1/3 of the wetland acreage and 1/2 of the basins have tilled bottoms, yet support only 11% of the

breeding population. However, 11% should not be construed as an insignificant number.

- o The use of temporary and seasonal tilled and untilled natural basins increases significantly as available surface water increases.
- o Temporary and seasonal ponds support over half(54%) of the breeding waterfowl population during average years. During wetter years, these ponds may support as much as 64% of the population. This compares to an average of 30% for the more permanent natural wetlands. The value of the more permanent wetlands is enhanced during dryer years.
- o The publication identifies temporary wetlands as of "low value" to breeding waterfowl, noting an average use of 1%. However, this statement ignores the value contributed by temporary wetlands with tilled bottoms which may account for up to 6% more use.
- o The publication identifies ephemeral wetlands(Class I) as providing "inconsequential" breeding habitat, contributing to less than .5% of the total waterfowl use. This statement fails to take into consideration the fact that this wetland type is usually dry by the end of April, only 6 days after data collection began in 1967 and 1968, and well before the survey period began in 1969. This statement also neglects the importance of these wetlands as early migration resting and feeding areas.

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- o Distribution of breeding waterfowl populations between wetland types is related to the availability of surface waters. As surface waters increase, waterfowl disperse to the temporary and seasonal wetlands.
- o Pintails are unique in their wetland requirements in that 24% of the breeding pairs were observed on temporary and seasonal wetlands with tilled bottoms, and 40% of the breeding pairs were observed seasonal wetlands without tilled bottoms.

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- o Table 5 indicates that dabbling ducks(mallard, pintail, teal, and widgeon) prefer temporary and seasonal wetlands over more permanent wetlands. That table also shows that the reverse is true for diving ducks(scaup, canvasback, and redhead).

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- o Pintails are especially attracted to tilled basin wetlands.
- o Optimum environmental conditions exist for breeding waterfowl during years of maximum surface acres in seasonal wetlands.
- o Given the time constraints of the study, small numbers of breeding waterfowl were observed on temporary wetlands.

- o Given the time constraints of the study, ephemeral wetlands were "of proportionally little significance to breeding waterfowl."

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- o Diving ducks use semipermanent to permanent wetlands regardless of the availability of surface water on seasonal wetlands.
- o Semi-permanent wetlands are critical to dabbling ducks during periods of low rainfall. These areas maintain a waterfowl population reserve for reproduction during future years when water conditions may be more favorable.

Senator FOWLER. Thank you, Mr. Lambertson. Last but not least is Mr. Milton Hertz, the Administrator ASCS. Welcome Mr. Hertz.

STATEMENT OF MILTON J. HERTZ, ADMINISTRATOR, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. HERTZ. Thank you, Mr. Chairman. It is a pleasure for me to appear before you today to respond to the conservation issues as they would relate to the Agricultural Stabilization and Conservation Service [ASCS]. I believe that through the several requests for information to bring to this committee, many of them have been answered and I would refer to the Senator from Georgia, Senator Nunn, in his summary of the Conservation Reserve signup and the number of acres of trees as my response to that. He had his numbers put together very well.

Mr. Chairman, one of the other issues that was raised that we were asked to respond to was the involvement of setting acceptable rental rates in our county offices at a level that would equate to the maximum local rental rates for a comparable acre of land. To address this issue we instructed our county committees at the local level, who I believe have the most expertise to make a judgment in any county in the United States, much more than we could here in Washington, to review the bids that were presented in this last signup and make a judgment whether, in fact, those rates were higher than what they felt the prevailing local rental rates were.

Across the country we had 325 counties that responded to that by lowering the acceptable rental rates established by the Secretary. At this point in time we do not know how many acres that might affect of the 4.5 million that were offered. The county committee also has the authority at the local level to look at each contract. If there is a grade variance of land within a county and some land might be more valuable than other, they do have the authority to make adjustments on what rental levels they would accept.

Another question that was posed to the Agency to respond to were the budgeting levels for payment of the Conservation Reserve contracts that are in place and that are anticipated to be in place as we reach our goal of the 45 million acres. Adequate funding has been appropriated for the payments that are now due. I believe the good Senator from Minnesota made reference to the fact that it should return to CCC authority to make these payments rather than a separate appropriation. If in fact that should happen, we would not have to rely on an annual appropriation to make these payments. The appropriation requests for the 1989 program have been presented on the Senate side at this point and will be presented to the House side in a couple of weeks. We anticipate their concurrence with those requests.

Mr. Chairman, I would also respond to some of the concerns that my fellow North Dakotan made about the swampbuster issues in North Dakota. The Soil Conservation Service sent a swat team to North Dakota and very diligently and very thoroughly looked at every piece of farmland in many of the counties. They still have folks up there working in making determinations as to what are wetlands. Since they have been there performing this activity, my

phone has stopped ringing. I thought, is there a big wreck out there waiting to happen? And I started calling. [Laughter.]

For the most part farmers are happy. Their anxieties are taken away and in some cases where they felt that Soil Conservation was being unduly restrictive in making wetland determinations, they were able to sit down and have explanations, negotiate, in making those determinations. I believe those farmers, at this point in time, are very relieved that they can go about their business. I think one of the things that both agencies did in implementing the provisions of swampbuster, and I would like to go back to a kind of a chiding that I took from Senator Kasten from Wisconsin when he said, "Can you be such a good administrator as to not take away program benefits from anybody for a swampbuster violation?" As we look back I think that the anxieties that have come out, and I will use our home State as an example, we literally scared the hell out of those farmers about making a wetland violation. We start out by saying that when the first thing they walk into a county ASCS office to sign up for any program, we give them a statement and ask "are you or are you not." The next step is to go to the Soil Conservation Service and have them actually document whether they are working with a wetland or whether they can continue in their normal way of farming.

I think that as we have gone through the progress of informing farmers, the two agencies working together, farmers now realize that if they have been farming a wetland in the past, they can continue farming it just exactly as they always have been. If there is a wet spot out there that has not had any drainage done to it, it is sacred, they cannot touch it. But normal farming practices that have been carried on over time may continue to be carried on.

I think that the concerns of the farmers as far as the penalties are concerned are embodied within the regulations of ASCS. In our program delivery and administration we have a provision that we call failure to fully comply. It is a provision that would allow a producer to come back into compliance with a much smaller penalty than taking away all of his program benefits if inadvertently or through bad advice, or just an error, he commits a violation of a program provision. We are proposing that the failure to fully comply provisions apply to both the sodbuster and the swampbuster provisions. This was brought, I think, to everyone's attention by a family farm in Idaho that inadvertently plowed up 1.7 acres of land. They owned land on one side of an idle strip of ground. They bought that plus another strip and in good farming management they wanted to join it together. The program benefits that this family operation, a father and two sons, were to receive was \$130,000. I do not think anyone in their good conscience could say for inadvertently plowing up 1.7 acres of land you are going to be penalized \$130,000. I think this is where our failure to fully comply provision can be applied although we have not determined what kind of a fine would be applied in this situation. If he planted a crop on it maybe we would say 10 times the value of the crop you harvested off of that 1.7 acres. Maybe \$5,000 an acre. Maybe \$100 an acre. But something commensurate with the value that he gained from that.

There again, I think in keeping our farmers informed with the requirement to have conservation plans, all of these issues do surface. They have become much more aware of them and I think we have come a long way in settling down a lot of the anxieties out in the countryside. Thank you, Mr. Chairman.

[The prepared statement and responses to questions of Mr. Hertz follow:]

Statement of Milton J. Hertz, Administrator
Agricultural Stabilization and Conservation Service
U.S. Department of Agriculture
before the
Committee on Agriculture, Nutrition, and Forestry
Subcommittee on Conservation and Forestry
United States Senate
March 24, 1988

Mr. Chairman and Members of the Subcommittee, it is a pleasure to appear before you today to discuss the conservation programs administered by the Agricultural Stabilization and Conservation Service (ASCS). First, let me update you on the progress of the Conservation Reserve Program.

Conservation Reserve Program (CRP)

Cumulative enrollment through the fifth signup, held in July 1987, is approximately 23 million acres, of which 14.6 million, or about 64 percent, are commodity base acres. This will result in annual soil erosion reduction of about 467 million tons.

At least two signup periods will be held during FY 1988. The first signup took place February 1 through 19, and the second signup is scheduled for July 18 through August 5.

The CRP eligibility criteria were expanded for the February signup to provide incentives for increased tree plantings and for the improvement of the nation's water quality. Specifically, filter strips -- cropland areas 66-99 feet wide next to streams, lakes and estuaries -- were eligible for the CRP even for the strip itself if normal soil erosion or land class criteria were not met. This change permits farmers to use participation in the CRP as a cost-effective option in establishing permanent cover adjacent to waterways to control nonpoint source pollution.

The qualifying erosion criterion for some land classes was changed from 3T to 2T -- that is, two times rather than three times the normal soil loss tolerance -- and for producers opting to plant trees on the designated areas, and the highly erodible predominance criterion was changed from two-thirds to one-third of the field.

Over 500,000 acres were offered to be planted to trees during the last signup period as a result of these USDA program changes. The program is getting closer to achieving its goal of 12.5 percent of the total CRP acreage planted to trees. If all 500,000 acres were accepted into CRP, this would amount to, counting previous sign-ups, a total of 1.7 million acres for tree planting.

Tentative results of the February signup indicate that bids were received on 4.5 million additional acres. Final enrollment data will not be available until about May 20. County ASC committees now have the responsibility for ensuring that rental rates under CRP contracts are not in excess of the prevailing local rental rates for an acre of comparable land in order to comply with the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 as contained in Public Law 100-202. This process is taking significantly more time than previous signups when maximum acceptable rental rates were announced by the Secretary of Agriculture within two weeks after the end of signup.

We have received the results of each county ASC committee's determinations county maximum rental rates. A total of 325 counties established maximum rental rates below the maximum acceptable rental rate set by the Secretary for the bid pool where the county is located.

It is anticipated that some counties, particularly in the Great Plains States, may reach the 25 percent limitation on enrollment of cropland. In those counties no further bids may be accepted unless a waiver is requested and approved. A total of 40 counties have been granted waivers for previous sign-ups.

For the CRP, policy decisions regarding how annual rental payments will be made, and other program changes can greatly affect the appropriation needs for this program. In the case of FY 1988, such program changes have lowered appropriation needs.

Approximately \$1.066 billion of the \$1.131 billion appropriated in 1988 for the CRP will be used to share the cost of establishing covercrops under the program largely for the 13 million additional acres that are expected to be enrolled by the end of FY 1988. Other FY 1988 cost share expenditures are for establishing cover crop on acres that were previously placed in the CRP. Also, as directed by the appropriation act, \$45.24 million has been transferred to the Soil Conservation Service (SCS) for the purpose of carrying out the conservation provisions of the Food Security Act.

The balance, \$19.76 million, will be used to fund SCS and Forest Service technical assistance specifically for the CRP. No funds were needed for annual rental payments due in FY 1988 since these payments were made entirely in CCC commodity certificates early in the fiscal year.

The FY 1989 appropriation request of \$1.864 billion would provide \$660 million for cost sharing on approximately 12 million 1989-crop acres, \$8 million for technical assistance, and \$1.196 billion for the majority of the \$1.493 billion in annual rental payment estimated to be due in FY 1989. Section 1234(d) of the Food Security Act of 1985 provides the authority to make rental payments in cash or commodities or some combination thereof, and the Budget proposes that the remaining rental payments due in FY 1989, an estimated \$297 million, be paid with commodity certificates.

Swampbuster and Sodbuster Programs

Several interagency and ASCS regional meetings have been held to discuss and explain the Highly Erodible Land Conservation (known as "sodbuster" and "conservation compliance") and Wetland Conservation (known as "swampbuster") regulations authorized under Sections 1201-1223 and 1241-1245 of Title XII of the Food Security Act of 1985. ASCS has also supplied operating procedures for State and county Agricultural Stabilization and Conservation Committees (Handbook 6-CP, "Highly Erodible Land Conservation and Wetland Conservation Provisions") to reflect that a person shall not be determined ineligible for program benefits because of producing an agricultural commodity on highly erodible land without a written conservation plan, if SCS determines that the producer is farming the land using an approved conservation system.

ASCS continues to work closely with SCS in achieving the conservation goals of the 1985 Act. Each agency is stressing a common sense approach to avoid adverse economic impacts on producers.

This concludes my remarks and I will be happy to respond to any questions you may have at this time.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON
 AGRICULTURE, NUTRITION, AND FORESTRY
 WASHINGTON, DC 20510-8000

April 7, 1988

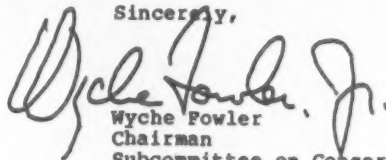
Mr. Milton Hertz
 Administrator
 Agricultural Stabilization and Conservation Service
 U.S. Department of Agriculture
 14th and Independence Street, S.W.
 Washington, D.C. 20250

Dear Mr. Hertz:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
 Chairman
 Subcommittee on Conservation and
 Forestry

Additional Questions for MILTON HERTZ, ASCS,
submitted by Senator Conrad

1. At the March 24 hearing, you first indicated to me that you did not believe that swampbuster rules reflected the actual intent of Congress, but later (apparently) contradicted that statement. Please explain the source of that apparent contradiction. Specifically, do you think that (1) the law as it finally passed does not reflect what Congress actually intended to do, or (2) the regulations do not reflect the intent of the law?
2. How many alleged violations of swampbuster rules have been reported to ASCS in North Dakota and in other states? Mr. Lloyd Jones of the U.S. Fish and Wildlife Service, states that he has reported 150 violations to ASCS, and has found several hundred more which he has not reported. He also asserts that ASCS has not done a good job of investigating the violations and has in fact ignored them. How many have been investigated by ASCS? How many alleged violations has ASCS referred to FmHA or other USDA agencies for penalty?
3. I understand that the Fish and Wildlife Service, in flying over farmers fields, notes evidence of drainage ditches and reports these to ASCS as "potential swampbuster violations." Do you regard such reports as potential violations? How do you follow up on such reports?
4. In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.

QUESTIONS SUBMITTED BY SENATOR CHRISTOPHER S. BOND (R-MO.)

Milton Hertz

1. If we assume that 70 percent of the 4.5 million acres enrolled in the last CRP signup are actually accepted, we are now at approximately 26 million acres. What, if any, actions do you foresee ASCS taking to increase enrollment? Without any further incentives, do you believe we will reach the goal of 45 million acres? Have the new maximum county rental rates impeded enrollment?
2. I am aware that the Department allowed enrollment of filter strips in the last signup. Do you envision the Department further expanding the scope of the CRP to include other environmental criteria?
3. Recent publications have highlighted large discrepancies in the amounts which counties have allowed for the cost-share portion of the CRP (attached article). For example, the cost-share level for seed and seedbed preparation in Perry County, Missouri is \$18.31. In Randolph County, Missouri, the amount increases to \$93 per acre. Although I realize these decisions are made at the county level, doesn't the state or federal ASCS office monitor these levels to ensure they are at a level consistent with the objectives of the 1985 farm bill? Has this problem been experienced elsewhere and what, if any, action has ASCS initiated to review this discrepancy?
4. There continues to be concern about restoring the Chesapeake Bay and the disappointing participation rates in the CRP in Chesapeake Bay states (Pennsylvania, Maryland and Virginia). What is the current signup rate in these three states, including the last signup, in comparison to land eligible for enrollment? How do these statistics/percentages compare on a national basis? What reasons does USDA attribute to the low CRP signup rate in the bay states?
5. Since nonpoint source run-off from agricultural lands has been identified as one of the major causes of the decline of the Chesapeake Bay, how can USDA agencies help in accelerating the unprecedented cleanup effort presently underway?

What's your share?

Survey shows wide range of Conservation Reserve Program cost sharing

By Larry Harper

The farmer was perturbed. He had signed up a portion of his cropland in the Conservation Reserve Program (CRP) and had just received his cost-sharing check. It wasn't what he thought it would be.

"Why is it," he asked, "that the ASCS only paid me \$29 an acre to establish native warm-season grass and my neighbor in the adjoining county is getting \$50?"

When the same farmer checked his cost-share payment for establishing cool-season grasses in the CRP he found a \$9 difference in what he and his neighbor received. His payment says \$18 an acre. His neighbor's payment was \$27.

This and other reports of variations among counties prompted Missouri Ruralist to ask the state ASCS office for a list of the payment schedules for all Missouri counties.

CRP cost sharing has a limit set by the 1985 farm bill of 50 percent of actual cost of establishing the practice on your farm. Local rates are set by county ASCS committees supposedly using local prices as the basis for the 50 percent cost sharing. However, the local committees do have the authority to set cost-share rates at something less than the 50 percent rate. Some counties, have chosen not to cost share some practices at all.

Using the figures supplied recently by the county offices to the state office we found a wide range of cost-share levels. In this comparison we selected two of the most popular practices cost shared under the CRP. Those practices are officially known as CP1 (cool season grass establishment) and CT2 (native warm-season grass establishment). The difference between the cost sharing levels of these two practices is caused mainly by the

cost of seed. Native warm-season grass seed has skyrocketed to around \$14 a pound during the last two years. CRP plantings have caused much of the increased demand for the limited supply.

Although warm-season grass plantings do not require nitrogen, and would tend to decrease costs for this practice, we do not make any cost sharing comparisons for fertility. We found the cost of fertility is about the same statewide and cost-share levels are much the same among counties. Widest variation among counties for nitrogen, for instance, was no more than 2 cents a pound.

What we were most interested in comparing was cost sharing for seed and seedbed preparation. We found that the cost-share levels for these combined costs ranged from \$8.035 in Knox County for cool-season grass establishment to a high of \$40 in Holt County. Aver-

age cost share for CP1 across the state was \$23.19 an acre.

Widest variations can be seen in warm-season grass establishment. Cost-share levels for seed and seedbed preparation ranged from a low of \$18.31 in Perry County to a high of \$93 in Randolph County. Average for all counties is \$49.03.

Not only is there a wide variation, but we found that most every county has its own way of figuring how much it should cost share.

Some counties declare a set level for seed and seedbed preparation. Others have a set level for seedbed, but a variable schedule for seed cost. A few counties pay on the various tillage practices performed. Even fewer specify a cost share for no till. Only a handful of counties take cost of weed control into consideration (usually with no till). About a fourth of the counties will cost share a temporary cover crop. The range for this practice was from \$1.50 an acre to \$18.20 an acre.

To compare cost-sharing levels for your county check the table below. For the cool-season grass practice we used each county's maximum payment, which usually meant an alfalfa/orchardgrass seeding mix. On warm-season grass we computed the cost share on use of big bluestem seed at the rate of 7 pounds per acre.

CRP cost-share rates for warm- and cool-season grasses

Prices are for seed and seedbed
preparation only. NR (not reported),
NC (no CRP contracts).

	WSG	CSG
Adair	25.50	15.00
Atchison	34.90	20.30
Andrew	38.50	24.01
Audrain	64.00	19.00
Barry	50.00	25.00
Barton	68.00	23.00
Benton	57.38	18.08
Bates	55.35	18.22
Bollinger	30.50	19.00
Boone	59.55	25.06
Buchanan	30.00	30.00
Butler	33.75	28.50
Caldwell	64.86	27.00
Callaway	42.00	23.50
Camden	27.50	25.20
Cape Girardeau	54.42	22.22
Carroll	30.65	23.12
Carter	24.00	24.00
Cass	42.50	22.50
Cedar	59.00	15.50
Chariton	66.52	16.00
Christian	62.18	29.22
Clark	51.65	20.51
Clay	80.00	32.50
Clinton	63.25	27.42
Cole	40.00	20.00
Cooper	57.35	21.00
Crawford	67.00	21.50
Dade	50.00	20.86
Dallas	34.00	17.00
Davies	63.00	21.50
Dekalb	62.50	35.00
Dent	22.50	27.01
Douglas	42.60	36.93
Dunklin	30.50	25.00
Franklin	40.41	18.56
Gasconade	81.28	20.51
Gentry	53.50	25.00
Greene	31.00	31.00
Grundy	45.67	22.40
Harrison	38.00	19.50
Henry	55.00	20.00
Hickory	27.50	24.10
Holt	40.00	40.00
Howard	65.00	23.65
Howell	NR	35.00
Iron	68.17	24.95
Jackson	61.50	25.00
Jasper	67.00	22.00
Jefferson	68.50	22.98
Johnson	57.25	21.95
Knox	26.00	8.035
Laclede	77.28	30.68
Lafayette	66.50	23.00
Lawrence	50.00	25.00
Lewis	52.95	22.49
Lincoln	67.31	28.17
Linn	57.50	20.00
Livingston	58.35	21.76
McDonald	45.00	24.00

Macon	65.74	19.34
Madison	42.18	17.16
Maries	NR	21.00
Marion	50.00	21.00
Mercer	40.00	22.50
Miller	32.00	25.00
Mississippi	NC	NC
Moniteau	NR	19.00
Monroe	60.00	24.00
Montgomery	59.25	26.85
Morgan	45.52	24.18
New Madrid	NC	NC
Newton	62.50	30.50
Nodaway	34.00	29.00
Oregon	24.88	16.13
Osage	NR	22.00
Ozark	NC	NC
Pemiscot	NC	NC

Perry	18.31	18.31
Pettis	58.25	22.90
Phelps	25.75	24.41
Pike	47.00	25.00
Platte	51.09	20.00
Polk	48.00	28.00
Pulaski	20.00	20.00
Putnam	30.00	20.00
Ralls	54.50	18.75
Randolph	93.00	25.00
Ray	54.17	21.19
Reynolds	70.50	24.00
Ripley	30.00	14.00
St. Charles	28.60	28.60
St. Clair	61.00	20.40
St. Francois	68.17	24.95
St. Genevieve	62.59	26.67
St. Louis	24.00	24.00

Saline	60.07	21.59
Schuyler	30.00	23.46
Scotland	45.13	28.55
Scott	57.00	26.09
Shannon	35.50	20.00
Shelby	49.22	20.00
Stoddard	65.00	37.00
Stone	50.00	25.00
Sullivan	47.53	15.47
Taney	83.16	27.11
Texas	29.17	22.00
Vernon	50.00	28.00
Warren	57.44	21.53
Washington	68.50	22.98
Wayne	NR	17.47
Webster	23.00	26.00
Worth	50.00	25.00
Wright	NC	NC

ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD
TO THE AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Hearing of the Subcommittee on Conservation and Forestry
On Oversight of Conservation Programs Administered by USDA
March 24, 1988

1. During the hearing, Mr. Hertz indicated that 110 farmers to date have lost farm program benefits as a result of being in violation of sodbuster and/or swampbuster.

Please provide for the record a breakdown of the location of those 110 farmers by state, and by type of violation by state (ie. sodbuster or swampbuster).

Please also indicate how many of those 110 farmers have appealed the violation decision through the administrative appeal process and have had their appeal denied; how many of those 110 farmers have pending appeals; and how many of those pending appeals are likely to be denied.

Please also provide the average amount of farm program benefits lost by these 110 farmers.

2. Mr. Hertz also indicated that an additional 500 farmers are currently in the "investigation appeal process".

Please provide for the record a description of the investigation appeal process, including estimated length of time to complete an appeal.

Please provide a breakdown of the location of those 500 farmers by state, and by type of potential violation within each state.

3. A budget analysis of the CRP recently done by the American Farmland Trust indicates that the CRP, when fully enrolled at 45 million acres, will reduce government outlays on commodity programs by \$11.2 billion and will cost \$7.9 billion to implement, thus producing a net budget savings from 1986 to 1990 of \$3.3 billion.

Has ASCS or any other agency within USDA conducted a similar budget analysis of the costs and savings associated with the CRP, either per year or over a 5 or 10 year period?

If so, please provide the Committee with any such analyses.

Does ASCS agree with the analysis of the AFT that the CRP will result in net budget savings to the federal government between 1986 and 1990?

Does ASCS agree with the AFT net budget savings figure of \$3.3 billion? If not, why not?

4. As you know, the Committee currently has before it two bills regarding multi-year set-asides -- H.R. 2752 and S. 2106.

Please provide for the record USDA's official position on these two pieces of legislation.

Please also explain what administrative actions, if any, the Department has recently taken, or plans to take within the next month, to encourage landowners and operators to move to multi-year set-asides and/or to enhance the wildlife opportunities on set-aside acreage.

Please provide the Committee with copies of any guidance documents issued to state and field USDA personnel to achieve conversion of annual set-asides to multi-year set-asides.

United States
Department of
Agriculture

Agricultural
Stabilization and
Conservation Service

P.O. Box 2415
Washington, D.C.
20013

MAY 19 1988

Honorable Wyche Fowler
Chairman, Subcommittee on Conservation
and Forestry
Committee on Agriculture
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of April 7 regarding the additional
questions from Committee Members from the March 24 hearing.

Enclosed are the answers to these additional questions.

Sincerely,

Mitt Leitz
Administrator

Enclosure

QUESTIONS FOR MILTON HERTZ, ASCS

1. At the March 24 hearing, you first indicated to me that you did not believe that swampbuster rules reflected the actual intent of Congress, but later (apparently) contradicted that statement. Please explain the source of that apparent contradiction. Specifically, do you think that (1) the law as it finally passed does not reflect what Congress actually intended to do, or (2) the regulations do not reflect the intent of the law?

In reviewing the transcript of the March 24 hearing, I don't believe that contradictory statements were made with respect to the swampbuster rules reflecting the "intent of Congress". I did point out that our agency--ASCS--was only one of the agencies involved in developing the regulations and went on to say that the final regulations did reflect the intent of the law, if not the expectations of some members.

2. How many alleged violations of swampbuster rules have been reported to ASCS in North Dakota and in other states? Mr. Lloyd Jones of the U.S. Fish and Wildlife Service, states that he has reported 150 violations to ASCS, and has found several hundred more which he has not reported. He also asserts that ASCS has not done a good job of investigating the violations and has in fact ignored them. How many have been investigated by ASCS? How many alleged violations has ASCS referred to FmHA or other USDA agencies for penalty?

No records have been kept of the number of alleged violations of swampbuster rules reported to ASCS.

All of the 150 potential violations reported to ASCS by Mr. Jones were investigated and no violations were found. The investigations revealed the potential violations were actually cases where farmers were cleaning existing ditches or were using plow furrows to remove ponding water. These were normal farming practices used on the farms before enactment of the Food Security Act of 1985 and are, therefore, in compliance with the swampbuster provisions of the Act.

Currently, there are 295 possible swampbuster violations being investigated nationwide with 14 possible violations being investigated in North Dakota.

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Persons requesting USDA benefits are referred to ASCS to certify on the Form AD-1026 that the person is in compliance with sodbuster/swampbuster rules. ASCS then refers the certification to the Soil Conservation Service for a wetland or highly erodible land determination, as applicable.

Where violations occur, ASCS will refer the violations to other USDA agencies providing benefits.

3. I understand that the Fish and Wildlife Service, in flying over farmers fields, notes evidence of drainage ditches and reports these to ASCS as "potential swampbuster violations." Do you regard such reports as potential violations? How do you follow up on such reports?

Reports from the Fish and Wildlife Service of potential swampbuster violations are investigated by ASCS field personnel as a required farm inspection after it is determined the potential violator is participating in USDA farm programs.

4. In your opinions, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.

The wetland conservation provisions of the Food Security Act of 1985, effectively and equitably applied nationwide, removes incentives for persons to produce agricultural commodities on converted wetlands. However, some producers may decide to convert wetlands if commodity prices increase to the extent conversion of wetlands would be profitable.

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1. If we assume that 70 percent of the 4.5 million acres enrolled in the last CRP signup are actually accepted, we are now at approximately 26 million acres. What, if any, actions do you foresee ASCS taking to increase enrollment? Without any further incentives, do you believe we will reach the goal of 45 million acres? Have the new maximum county rental rates impeded enrollment?

Assuming 26 million acres are contracted, we would have met the goal established by Congress in the "Act" for 1988. Since the CRP is working as intended, it is a very popular program, and is on target, I do not foresee the need to take any significant actions to increase enrollment at this time.

We plan on reaching the 40-45 million acre goal by making only minor adjustments to fine tune the existing program. Significant additional outlays over past estimates are not anticipated to be needed to reach the 40-45 million acre goal by 1990 at this time.

It is difficult to tell at present the effect of the new rental rate structure. The new structure may have caused some farmers not to bid and reduced rental rates will mean that some bids which otherwise might have been accepted will not be. Final signup date is not yet available.

2. I am aware that the Department allowed enrollment of filter strips in the last signup. Do you envision the Department further expanding the scope of the CRP to include other environmental criteria?

We continue to monitor the CRP to insure meeting the various objectives of the program. Other environmental criteria could be included, if determined necessary, as a minor adjustment similar to the inclusion of filter strips as was done during the sixth signup.

3. Recent publications have highlighted large discrepancies in the amounts which counties have allowed for the cost-share portion of the CRP (attached article). For example, the cost-share level for seed and seedbed preparation in Perry County, Missouri is \$18.31. In Randolph County, Missouri, the amount increases to \$93 per acre. Although I realize these decisions are made at the county level, doesn't the state or federal ASCS office monitor these levels to ensure they are at a level consistent with the objectives of the 1985 farm bill? Has this problem been experienced elsewhere and what, if any action has ASCS initiated to review this discrepancy?

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The levels were reviewed by the Missouri State ASC Office. The range up to \$93.00 is for warm season grasses which amounts to less than 10 percent of the total plantings in Missouri. One of the reasons so few acres are planted to these species is the initial out-of-pocket costs to producers and the lack of availability of reasonably priced seed. Many counties kept their rates for warm season grasses the same as the cheaper cool season grasses because of the lack of available seed or that it is not a desirable cover due to soil type or condition for their particular area. These local officials are better able to determine the suitability and adaptability of various grass species. The range on cool season grasses is much less, from \$14.00 to \$40.00. The primary reason for this amount of variation is the different types of seed bed preparation costs being included such as no till versus multiple operations of conventional tillage.

ASCS has delegated the responsibility to the State and local level for establishing cost-share rates. Based on the information furnished and a review with the Missouri State ASC Office we believe that the rates reported accurately reflect the conditions and situations present at the time the rates were established.

4. There continues to be concern about restoring the Chesapeake Bay and the disappointing participation rates in the CRP in Chesapeake Bay states (Pennsylvania, Maryland and Virginia). What is the current signup rate in these three states, including the last signup, in comparison to land eligible for enrollment? How do these statistics/percentages compare on a national basis? What reasons does USDA attribute to the low CRP signup rate in the bay states?

Through the fifth signup, 3,682 acres in Maryland or approximately 1 percent of eligible acres, 45,006 acres in Pennsylvania or approximately 3 percent of eligible acres, and 36,322 acres in Virginia or approximately 4 percent of eligible acres have been placed under contract. During the sixth signup, an additional 3,825 acres in Maryland, 18,464 acres in Pennsylvania, and 17,386 acres in Virginia were offered for CRP. Final contract data will not be available for the sixth signup until later, however, the CRP participation appears to be increasing in the Chesapeake Bay area.

On a national level 22 percent of the eligible highly erodible land has been placed in the CRP to date.

Urban encroachment on agricultural lands in the bay drainage area has created a speculative market for agricultural lands that is significantly higher than the true agricultural value. Rental rates necessary to entice enrollment would be too costly because of this uncertain inflationary factor.

5. Since nonpoint source run-off from agricultural lands has been identified as one of the major causes of the decline of the Chesapeake Bay, how can USDA agencies help in accelerating the unprecedented cleanup effort presently underway?

The cleanup effort underway is being enhanced by several USDA programs including the CRP. By structuring USDA programs so that piggy-backing efforts by State and local organizations can provide additional incentives and entice greater participation, USDA is accelerating this effort in an economical and cost-effective manner.

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1. During the hearing, Mr. Hertz indicated that 110 farmers to date have lost farm program benefits as a result of being in violation of sodbuster and/or swampbuster.
- a. Please provide for the record a breakdown of the location of those 110 farmers by state, and by type of violation by state (i.e. sodbuster or swampbuster).

SODBUSTER

Massachusetts - 3	Oregon - 1
New York - 1	South Dakota - 1
Pennsylvania - 2	Arizona - 10
West Virginia - 1	Colorado - 2
Arkansas - 2	Kansas - 12
Georgia - 1	Oklahoma - 3
Kentucky - 5	Illinois - 1
Louisiana - 1	Indiana - 6
North Carolina - 4	Iowa - 7
Tennessee - 8	Michigan - 1
Virginia - 11	Minnesota - 1
Montana - 2	Missouri - 1
Nebraska - 6	Ohio - 2
North Dakota - 5	Wisconsin - 5

SWAMPBUSTER

Indiana - 1	Wisconsin - 1
Minnesota - 2	New York - 1

- b. Please also indicate how many of those 110 farmers have appealed the violation decision through the administrative appeal process and have had their appeal denied; how many of those 110 farmers have pending appeals; and how many of those pending appeals are likely to be denied.

This information is not now available. We will obtain this information and forward it at a later date.

- c. Please also provide the average amount of farm program benefits lost by these 110 farmers.

The benefits lost by these 110 farmers averages out to \$17,353.00 per farmer.

2. Mr. Hertz also indicated that an additional 500 farmers are currently in the "investigation appeal process".
- a. Please provide for the record a description of the investigation appeal process, including estimated length of time to complete an appeal.
- b. Please provide a breakdown of the location of those 500 farmers by state, and by type of potential violation within each state.

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My response that about 500 farmers were in the investigation appeal process was meant to cover those cases involving pending swampbuster determinations that are now before county ASC committees along with expected appeals by those individuals who have received adverse determinations at the county level. These individuals still have the right of appeal to the State and national levels. This is an ongoing process and these numbers change constantly.

The "investigation appeal process" is not a formal appeals process. A farmer's request for a determination after submitting additional facts requires verification by ASCS.

These cases run the gamut of possible violations and are located primarily in Arkansas, North Carolina, North Dakota, South Dakota, Indiana, Iowa, Michigan, and Minnesota.

3. A budget analysis of the CRP recently done by the American Farmland Trust indicates that the CRP, when fully enrolled at 45 million acres, will reduce government outlays on commodity programs by \$11.2 billion and will cost \$7.9 billion to implement, thus producing a net budget savings from 1986 to 1990 of \$3.3 billion.
- a. Has ASCS or any other agency within USDA conducted a similar budget analysis of the costs and savings associated with the CRP, either per year or over a 5 or 10 year period?
 - b. If so, please provide the Committee with any such analyses.
 - c. Does ASCS agree with the analysis of the AFT that the CRP will result in net budget savings to the federal government between 1986 and 1990?

Yes, the Department conducted an analysis during the summer of 1987. It was based on data from the first four signups. It indicated that 68 percent of the acres enrolled in the CRP resulted in reductions to commodity base acres. Estimates at that time were that the CRP could cost \$10.6 billion for FY 86-92. Based on the 1987 commodity program provisions, the direct savings and the production adjustment effects were estimated at about \$8.7 billion during the period. The \$1.9 billion net cost of the CRP largely represents the cost sharing for establishing permanent vegetative cover. A copy of that analysis is attached.

The Department does not agree with the AFT analysis showing the CRP to be a net budget saver. Differences between the \$1.9 billion net cost estimated in the USDA analysis and the \$3.3 billion of net budget savings in the AFT analysis result from assumptions in the AFT analysis that underestimate the costs and overestimates the savings. A detailed analysis comparing the differences in costs and the differences in savings is attached.

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4. As you know, the Committee currently has before it two bills regarding multi-year set-asides -- H.R. 2752 and S. 2106.
- a. Please provide for the record USDA's official position on these two pieces of legislation.
 - b. Please also explain what administrative actions, if any, the Department has recently taken, or plans to take within the next month, to encourage landowners and operators to move to multi-year set-asides and/or to enhance the wildlife opportunities on set-aside acreage.
 - c. Please provide the Committee with copies of any guidance documents issued to state and field USDA personnel to achieve conversion of annual set-asides to multi-year set-asides.

No legislative reports have been issued on these bills.

USDA conservation and commodity programs provide many incentives and opportunities for producers to simultaneously obtain annual commodity price and income support and provide long-term protection for soil, water, and wildlife resources.

Long-term conservation

- The Conservation Reserve Program (CRP) will reduce excess crop production capacity and protects natural resources on 40-45 million acres for at least 10 years.
- Swampbuster regulations help maintain wildlife habitat and discourage conversion of wetlands to cropland.
- Sodbuster regulations also contribute to resource conservation and discourage the conversion of highly erodible forests, rangeland, and pasture to cropland.
- Conservation compliance provisions encourage producers to apply protective conservation practices on highly erodible cropland.
- The Agricultural Conservation Program (ACP), Water bank Program, Forestry Incentive Program, Rural Clean Water Program, and Colorado Salinity Control Program provide cost-share assistance to producers for practices that protect natural resources for multiyear periods.

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Annual Commodity Program

- State and local ASC committees consult with State wildlife agencies in establishing cover and weed control requirements on ACR and Conservation Use (CU) acres. (Issued January 14, 1983)
- Regulations permit acreage which is designated as ACR and CU in a crop year to be designated in the same manner the following year (Issued January 14, 1983)
- ACP provides cost-share assistance for establishing permanent cover for at least 5 years on ACR and CU for conservation purposes. (In effect since ACP began in 1930s)

Producers can request ACP cost-share assistance for establishing permanent vegetative cover on ACR and CU for conservation purposes. The cost-shared practices must be maintained for 5 to 10 years, depending on the particular practice. Although most of the permanent cover practices benefit wildlife, two practices relate specifically to the conservation of wildlife habitat-permanent wildlife habitat (WL 1), and shallow water areas for wildlife (WL 2). The WL 1 practice establishes or improves a stand of trees, shrubs, grasses, legumes or other vegetative cover to provide permanent habitat, food, or cover for wildlife or erosion control. The practice must be maintained for at least 5 years. The WL 2 practice allows establishment of dams, levees, shallow dugouts, etc., and food and cover planting to develop and restore shallow water areas for wildlife. This practice must be maintained for at least 10 years.

- Regulations permit establishment of wildlife food plots on ACR and CU as an acceptable cover practice. (Issued January 14, 1983)
- Regulations permit small grains planted on ACR and CU to mature and fall to form wildlife food and cover. (Issued January 14, 1983)
- Regulations permit ACR acreage planted to trees to be acceptable as ACR for the following commodity program year. (Issued January 14, 1983)
- Regulations permit cost-share assistance for permanent cover establishment on a designation of 1989-accepted CRP acreages as ACR for 1988. (Established in P.L. 99-198, December 23, 1985)
- Regulations permit spot control and chemical control of weeds to avoid disturbing nesting wildlife. (Issued March 11, 1986)
- Regulations permit State and County ASC committees to delay final weed control dates until weeds reach maturity (usually past critical nesting periods). (Issued March 11, 1986)

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As indicated in the attachments, ASCS encourages farmers planning to participate in annual programs to designate the same land each year as ACR and CU and to devote such acreage to permanent vegetative cover. (Issued December 22, 1987).

Commodity Program Savings
from
Conservation Reserve Program

- The breakdown by commodity of the 16.8 million acres currently accepted into the CRP for the 1986 and 1987 crop years with an estimate for 1990 is shown below. About 68 percent, or approximately 11.5 million acres, constitute a reduction to base acres through 1987. The bonus payment of \$2.00 per bushel of corn program yield brought additional corn base into the CRP for 1987.

Commodity	Crop Year		
	1986	1987 (Million Acres)	1990
Wheat	.6	4.5	13.5
Feed grain			
corn	.2	2.5	5.6
other	.4	3.6	9.5
Cotton	.1	.9	2.3
Soybeans	.2	2.0	4.5
Nonprogram	.5	3.3	9.6
Total	2.0	16.8	45.0

- CRP costs and related net Commodity Credit Corporation (CCC) savings for selected periods are shown below.

	1986-1987	1988 (Million Dollars)	1989	1986-1992
CRP cash costs	\$703	\$1,388	\$2,067	\$10,649
CCC savings	\$-87	\$ 374	\$1,462	\$ 8,655
Net CRP cost	\$790	\$1,014	\$ 605	\$ 1,994

- CRP cash costs include rental payments and cost sharing for establishing a permanent cover crop.
- CCC savings are in two categories. There are direct savings from reduced deficiency payments to CRP participants and there are indirect savings due to market price effects, storage cost savings, and reduced net loan outlays as a result of reduced production. Direct savings were estimated to be about 40 percent of the total, indirect savings about 60 percent.
- The analysis assumes the bonus for corn base acreage would not be continued. The bonus payment is considered as an indirect cost to CCC for 1987.
- The cost share for establishing vegetative cover is \$2.4 billion, approximately representing the net cost of the CRP through 1990. Savings exceed rental payments thereafter.

Commodity Credit Corporation
Conservation Reserve Program Savings by Commodity

(Dollars in millions/Acres in millions)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	Total
CCC Outlays ^{1/}	\$25,841.0	\$23,408.0	\$17,500.0	\$21,303.0	\$21,088.0	\$18,924.0	\$18,070.0	\$146,134.0
Less CRP Outlays	23.0	680.0	1,388.0	2,067.0	2,183.0	2,154.0	2,154.0	10,449.0
Plus Total Savings	19.0	-106.0	374.0	1,462.0	2,245.0	2,393.0	2,268.0	8,655.0
CCC Outlays (w/o CRP)	25,837.0	22,622.0	16,486.0	20,598.0	21,150.0	19,163.0	18,184.0	144,140.0
Net change	+4.0	+786.0	+1,014.0	+605.0	-62.0	-239.0	-114.0	+1,994.0
Wheat (Acres)	0.6	4.5	8.9	12.5	13.5	13.5	13.5	13.5
Direct	\$ 4.0	\$ 29.0	\$ 37.0	\$292.0	\$483.0	\$506.0	\$346.0	\$1,697.0
Indirect	10.0	103.0	127.0	285.0	320.0	140.0	42.0	1,027.0
Total	14.0	132.0	164.0	577.0	803.0	646.0	388.0	2,724.0
Feedgrains (Acres)	0.6	6.1	9.9	14.0	15.1	15.1	15.1	15.1
Direct	\$ 2.0	\$ 45.0	\$ 25.0	\$168.0	\$250.0	281.0	\$ 219.0	\$1,050.0
Indirect	0.0	-323.0 ^{2/}	103.0	593.0	712.0	859.0	953.0	2,897.0
Total	2.0	-278.0	128.0	761.0	962.0	\$1,140.0	1,232.0	3,947.0
Cotton (Acres)	0.1	0.9	1.5	2.1	2.3	2.3	2.3	2.3
Direct	\$ 1.0	\$20.0	\$ 40.0	\$ 49.0	\$123.0	\$202.0	\$209.0	\$644.0
Indirect	1.0	10.0	1.0	2.0	14.0	16.0	11.0	55.0
Total	2.0	30.0	41.0	51.0	137.0	218.0	220.0	699.0
Soybeans (Acres)	0.2	2.0	3.3	4.0	4.5	4.5	4.5	4.5
Direct	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	0.0	\$ 0.0	\$ 0.0	0.0
Indirect	1.0	24.0	98.0	133.0	\$370.0	380.0	414.0	\$1,420.0
Total	1.0	24.0	98.0	133.0	370.0	380.0	414.0	1,420.0
Other Land (Acres)	0.5	3.3	6.2	9.2	9.6	9.6	9.6	9.6
Other Savings/Costs								
Direct	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.0
Indirect	0.0	-14.0	-57.0	-60.0	-27.0	9.0	14.0	-135.0
Total	0.0	-14.0	-57.0	-60.0	-27.0	9.0	14.0	-135.0
Subtotal								
Direct	\$ 7.0	\$ 94.0	\$102.0	\$ 509.0	\$ 856.0	\$ 989.0	\$ 834.0	\$3,391.0
Indirect	12.0	-200.0	272.0	953.0	1,389.0	1,404.0	1,434.0	5,264.0
Total Savings	\$19.0	\$-106.0	\$374.0	\$1,462.0	\$2,245.0	\$2,393.0	\$2,268.0	\$8,655.0
Total Acres	2.0	16.8	29.8	41.8	45.0	45.0	45.0	45.0

^{1/} Includes appropriated funds for CRP after FY 1987. Indirect savings are net of PIX rental payments.

^{2/} Includes cost for corn bonus.

COMPARATIVE BUDGETARY COSTS AND SAVINGS OF THE CONSERVATION RESERVE PROGRAM

In recent testimony before the U.S. Senate Subcommittee on Conservation and Forestry of the Committee on Agriculture, Nutrition, and Forestry, the American Farmland Trust (AFT) estimated that the Conservation Reserve Program (CRP) will save the government \$3.3 billion by 1991. In developing the FY 89 budgets, however, the USDA projected that the CRP would cost \$1.9 billion between 1986 and 1991. The basic analytic methods used in the two analyses are quite similar. Different assumptions about a variety of program costs and savings lead to the \$5.2 billion discrepancy.

Differences in Cost

- o USDA assumes that CRP rental rates increase each year as an incentive for ADDITIONAL acreage to enter the program. AFT assumes the 1987 CRP rental rate continues for the remainder of the program. Analysis of past CRP contract rental data indicates that the rate has increased for each successive signup. This accounts for \$.6 billion of the discrepancy.
- o USDA includes a cost of \$.3 billion for the one time corn bonus offered to CRP participants during 1987. AFT does not include this cost.
- o The costs of establishing vegetative cover for previously harvested land are assumed to increase over time in the USDA analysis. AFT assumes that per acre establishment costs do not change through 1990. Therefore, AFT estimates that establishment costs are \$.6 billion lower than the USDA estimate.
- o USDA estimates CRP payments for technical assistance to farmers planting vegetative cover costs \$.1 billion. AFT does not include a technical assistance cost.

Differences in Savings

- o When program crop acreage is enrolled in the CRP, a direct reduction in Commodity Credit Corporation (CCC) costs occurs because production of program commodities declines. USDA assumes that by 1990 30 of the 45 million acres in the CRP would be program crops compared to the AFT assumption of 37 million acres. The 7 million acre difference in program crop acreage translates into a difference of \$1.8 billion in program cost savings.
- o When market prices of agricultural commodities rise, CCC costs for deficiency payments decline. The AFT estimate of savings in deficiency payments is \$1.8 billion greater than the USDA estimate. The difference in deficiency payments appears to be due to different price response for corn. AFT shows an increase of \$.13/bushel of corn. An Economic Research Service analysis estimated a \$.03/bushel increase in the price of corn. A \$.10/bushel difference in the increase in corn prices would account for the \$1.8 billion difference in deficiency payment cost savings. A portion of this difference could also be due to different assumptions concerning target prices and loan rates for 1988 through 1990.

Comparative Budgetary Costs and Savings of the Conservation
Reserve Program (Billions of Dollars)

	USDA Estimate a/	American Farmland Trust Estimate b/	Difference (AFT-USDA)
<u>Program Costs</u>			
Rental	\$ 6.8	\$ 6.2	\$ -.6
Corn Bonus	.3	0	-.3
Cover			
Establishment	2.3	1.7	-.6
Technical			
Assistance	.1	0	-.1
Total Costs	9.5	7.9	-1.6
<u>Program Savings</u>			
Direct Savings	3.0 q/	4.5 q/	1.8
Indirect Savings	4.6 q/	6.7 q/	1.8
Total Savings	7.6	11.2	3.6
Net Program Savings	-1.9	3.3	5.2

a/ USDA inter-agency analysis of Conservation Reserve Program prepared for FY 1989 budget. The USDA estimates were adjusted to a 1986-1991 time frame to correspond to the American Farmland Trust estimates.

b/ Economic Perspectives, Inc. study of Conservation Reserve Program prepared for American Farmland Trust.

q/ Following the USDA study 40 percent of program cost savings are assumed to be direct savings in program costs.

Info Memo #49-87

ASCS RECOMMENDS PERMANENT COVER FOR ACR

(NAME), (TITLE) of the _____ County Agricultural Stabilization and Conservation Service, says farmers who plan to participate in the annual farm programs should ~~seriously~~ consider designating the same acreage each year as acreage conservation reserve (ACR).

"An important point that farmers may want to consider in 1988 is devoting these acres to a permanent vegetative cover, such as perennial grasses".

_____ said that this practice is especially effective on fragile, erosive soils and will help maintain the ground from year-to-year. Additionally, this cover provides wildlife food and habitat.

"We encourage farmers to consider the soil and water conservation benefits, protection of wildlife, and the long-term nutrient returns from a well-chosen, multi-year cover crop, when deciding on the cover and proper control measures for their acreage conservation reserve," the ASCS official said.

Senator FOWLER. Thank you, Mr. Hertz.

Senator BOSCHWITZ. Same question in mind. I believe that Mr. Lambertson said that he feels that there have been more removal of wetlands in 1987 or that the pace has picked up. Am I reflecting your statement correctly? Has your swat team or have your researches also confirmed that?

Mr. HERTZ. Mr. Chairman, Senator Boschwitz, we did a county by county survey on possible violations of both the sodbuster and the swampbuster. Pending investigation at this point in time are approximately 300. Now, this is nationwide.

In responding to your question about has there been accelerated drainage, I believe one would have to go back to the time prior to the enactment of the conservation measures in looking at what projects had been commenced at that point in time. In referring to North Dakota, I think it is significant that a lot of drainage has taken place because there are, I believe, five counties that had watersheds that the commenced determination was made. The progress that they have made and the drainage in these counties would suggest, yes, that there is a lot more drainage going on.

Senator BOSCHWITZ. Now than before?

Mr. HERTZ. Well, now than before, yes. But based again on the commenced determination that, in fact, the project had been started prior to the enactment of the conservation measures.

Senator BOSCHWITZ. Have you looked at Minnesota, as well?

Mr. HERTZ. Yes. Minnesota is somewhat unique in that respect.

Senator BOSCHWITZ. In many respects. [Laughter.]

Mr. HERTZ. Yes, sir. I think.

Senator FOWLER. Home of the world champions.

Senator BOSCHWITZ. Thank you, Mr. Chairman, for mentioning that.

Mr. HERTZ. I think the development of the water management plans on farms in Minnesota probably was ahead of North Dakota, and a lot of the projects that would indicate that drainage is happening now probably happened prior to these new conservation laws.

Senator BOSCHWITZ. So that you do not see that happening in Minnesota?

Mr. HERTZ. That is true.

Senator BOSCHWITZ. I have often maintained to my friend Conrad that we are ahead and I am pleased to hear a confirmation of that. [Laughter.]

Senator CONRAD. But falling behind rather rapidly. [Laughter.]

Senator FOWLER. Do you have any questions, Senator Conrad?

Senator CONRAD. Yes, I do. Thank you, Mr. Chairman. First of all to Mr. Hertz, it's very good news that I hear you saying this morning on the "failure to fully comply" provisions, that those be applied in these circumstances. Because, as you know, one of the very serious problems we confront is that farmers have been advised repeatedly that the only penalty is the drop dead provision. Total loss of farm program benefits. What you have said here today is, I think, very good news. Because if we can use those "failure to fully comply" provisions that would certainly provide some interim penalty steps, instead of having to go right to the draconian measure of a drop dead provision.

Let me just ask, Mr. Hertz, if you could not use the "failure to fully comply" provisions, what effect on enforcement do you think it would have, to have as the only penalty open to you, complete termination of farm program benefits? Do you think anybody would be willing to put the hammer down and invoke the penalty very frequently when they know that is the end of the game for a farmer?

Mr. HERTZ. Well, Senator Conrad, I am sure that if using this example that I used in the sodbuster, that if we had dug our heels in and said we are going to take that \$130,000, I think it would have gotten an awful lot of attention.

Senator CONRAD. I think you are right. We would have, I think, a significant outpouring of public opinion, don't you?

Mr. HERTZ. Yes, sir. One thing I might point out, Senator Conrad, is, that tied with this failure to fully comply is a determination that the county committees would have to make, if the activities of the farmer were in a good faith effort. We feel that we do not want it opened up to the fact that a farmer would say, well I'm going to get rid of this 5 acres of wetland because I know that they are only going to fine me \$10,000. If he deliberately goes in and does that, then we will go after the whole package.

But it is more of a provision to take care of the mistakes, let's say misinformation.

Senator CONRAD. When did you determine that this would be possible, to go to "failure to fully comply" provisions?

Mr. HERTZ. I believe we have been working on that for a long time. Wondering whether in fact we did have the authority.

Senator CONRAD. When did you make a final determination that you could do that?

Mr. HERTZ. Just recently. In fact, we do not have notices to the field at this point.

Senator CONRAD. That was my next question; are there notices to the field?

Mr. HERTZ. No.

Senator CONRAD. And if not, when might we expect notices to the field on the option of the "failure to fully comply" provision?

Mr. HERTZ. I would have to talk to my program people. They are working with the guidelines and the parameters under which we would use this provision. It is in the county offices now as far as the other programs are concerned. But it should be there shortly.

Senator CONRAD. One other question to Mr. Hertz, and that involves the question of congressional intent. We have done, Mr. Chairman, a laborious review of the legislative record on both the House side, the Senate side and in the conference committee and I would like to submit that for the record, Mr. Chairman. It seems readily apparent.

Senator FOWLER. The laborious review of the legislative record will become a part of the hearing record.

[The material follows:]

Protection of Wetlands
Subtitle C, Title XII

Food Security Act of 1985 (Public Law 99-198)

Conservation provisions are found in Title 12 of the Food Security Act of 1985 (P.L. 99-198). This legislation was developed primarily during calendar year 1985.

A source of controversy over the wetlands protection provisions concerns the intent of Congress regarding wetlands that have traditionally been cultivated. Did the Congress intend to place restrictions on such lands, or was the intent to "grandfather" such lands and simply discourage the future conversion of uncultivated wetlands into cropland?

Summary: In both House and Senate, the record contains less discussion of wetlands protection than sodbuster provisions and the planned Conservation Reserve Program (CRP). The House bill (H.R. 2100) exempted, from both sodbuster and swampbuster provisions, land that had been cultivated or set-aside during any of the 1981-1985 crop years. The House bill also exempted from swampbuster wetland that was converted prior to the law's passage. The Senate bill (S. 1714) differed in that it did not specifically exempt from swampbuster land that had been cultivated or set-aside during the 1981-1985 crop years. Language in the Senate report allows the Secretary to exempt certain wetlands if the effect on wetland values is minimal. This language was derived from a provision, discussed during the markup sessions, to allow the Secretary to exempt "small, low-value wetlands as designated by the Secretary, that could incur within existing cropland, hay land, or pasture land."

In the section-by-section analysis, the Conference Committee report specifically adopted the House exemption relating to sodbuster. The Conference Report does not reflect a discussion of the difference between the two houses' swampbuster exemptions. The language of the law conforms to the Senate bill.

Legislative Action in the House

Hearing

The House Agriculture Committee's Subcommittee on Conservation, Credit, and Rural Development held a hearing on April 4, 1985, to receive testimony on conservation provisions. There were 23 witnesses, including 3 members of Congress, 1 USDA official, and 19 representatives of various conservation, environmental, forestry, and wildlife groups.

As the House Agriculture Committee's report (Report 99-271) notes, "The sodbuster and conservation reserve proposals received the most comments." However, at least two witnesses--Maureen Hinkle of the National Audubon Society and Edward Osann of the National Wildlife Federation--spoke in some detail about wetlands. Ms. Hinkle focused on the different types and value of wetlands. Mr. Osann specifically recommended a "wetland" definition:

"Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

According to Mr. Osann, this definition was in use by the Army Corps of Engineers and "its application is widely understood by most federal and state agencies. Its use in this provision would be consistent with other uses."

Subcommittee Markup

On April 23, 1985, the Subcommittee met to consider conservation legislation. H.R. 2108, the "Soil Conservation Act of 1985," was considered. The subcommittee report contained provisions relating to highly erodible lands ("sodbuster") and a proposed Conservation Reserve Program (CRP), but did not contain wetland protection provisions.

Agriculture Committee Markup

On July 9, 1985, the full House Agriculture Committee met to consider Title 12, Resource Conservation, as reported by the Subcommittee. The markup vehicle was the subcommittee print.

Representative Daschle introduced an amendment that would "extend the sodbuster provisions to certain wetlands" (see Appendix A). Mr. Daschle noted that while the sodbuster provisions would be retroactive, the swampbuster amendment would only be concerned with conversions of wetlands as of the date of enactment. Several members raised concerns about potential problems with the definition of "wetlands," the principal one being that it could be construed to cover areas that are not traditionally thought of as wetlands. The Committee tentatively approved the Daschle amendment by voice vote and agreed to a subsequent markup to revise the definition of "wetlands."

Representative Daschle's comments during the July 9 discussion of his amendment clearly indicate an intent to grandfather land that had been previously cultivated. Among his comments were the following:

My legislation...would deny the same benefits currently as are included in sodbuster. It's exactly the same legislation as sodbuster but it deals with wetlands as well. There is one big difference in that sodbuster is retroactive; the swampbuster legislation would begin as of the date of enactment. There would be no retroactivity to this amendment. This is a very practical piece of legislation. It simply says that as of now, we won't be breaking any additional wetlands out for agricultural purposes. It uses the same definition of "wetlands" used by the Corps of Engineers and the Soil Conservation Service, because this definition is familiar and widely understood. All we are trying to do is to prevent a wetland which is clearly that, in the opinion of local decision-makers, from being broken up for agricultural purposes. I don't think you can deal with all specific circumstances in legislation. What we're trying to do is very simply to bind what we're talking about in law with the definition of a wetland. We're giving ample opportunity for people locally to make up their minds with regard to the relationship of this definition to the circumstances.

On July 31, 1985, the Committee returned to the conservation title. Mr. Daschle offered a revised swampbuster amendment (see Appendix B). Again, there was discussion about which land would be covered; concerns were expressed by several members. In response, Mr. Daschle stressed that (1) land that had been cultivated in the past was exempt from swampbuster; (2) the bill contained an exemption for future alteration of wetlands if such alteration was part of a conservation plan approved by local SCS officials; and (3) the local officials would have the flexibility to take into account the unique hydrology and farming practices in each area when approving such plans and otherwise applying the law.

Representative Franklin offered an amendment "to provide an exception for small wetland areas in fields of which the predominant part is not wetland." Mr. Daschle spoke against the amendment on the grounds that (1) it was unnecessary, because such areas could be drained or altered, if part of an approved conservation plan, under his proposal; (2) it would be difficult to convey what is meant by "small" in legislation, and (3) it would be better to let local officials make such determinations on a case-by-case basis. He offered to compose report language to address Mr. Franklin's concern. When Representative Huckaby expressed a concern that many cases would end up in the courts, Mr. Daschle stated that the intent of the legislation was to preclude the courts' intervention by spelling out that local officials have the authority to approve changes. The Franklin amendment failed, 15 to 11.

Mr. Daschle's proposal provided that the term "converted wetland" would not include wetlands on which production of an agricultural commodity was possible as a result of actions by a producer if such actions had a "minimal effect" on the wetland's hydrological and biological value. This provision suggests an intention to allow cultivation on existing wetlands, without the wetland subsequently being determined to have been "converted." The provision is consistent with Representative Daschle's statements to the effect that the purpose of the bill was to prevent the future conversion of wetland. However, since the House bill also exempted any land cultivated or set aside for any of the 1981 through 1985 crop years, the "minimal effects" provision would apparently have only been applicable to wetland, not previously cultivated, that might be cultivated after the law's passage. Such land would not be considered "converted" just because cultivation was allowed.

Again, Representative Daschle's comments during the July 31 discussion of his amendment indicate a clear intent to grandfather land that had been previously cultivated. Among his comments were the following:

What we're trying to say is that there are some these wetlands that are a lot more valuable, a lot more precious as wetlands, and then there are others....The soil definition of wetland would not apply to temporarily flooded acres that are normally under production....If production was underway at any time in the past, that land would be grandfathered. That is the intent of the author of this legislation...It's exactly my intent to do exactly the same [for wetlands] with regard to provisions of sodbuster....Any agricultural land that has been in production at any time up until the date of enactment is protected. I want to make sure everyone understands that.

In response to Committee members concerns regarding specific situations, Mr. Daschle replied that farmers would still be able to alter certain wetlands if such alteration was part of an approved conservation plan. Section 1203(a)(4) of his proposal (see Appendix B) provided for this exemption. But in the conference committee in December, this section was deleted with little discussion.

Committee on Merchant Marine and Fisheries

The Committee on Merchant Marine and Fisheries reviewed H.R. 2100 and the Agriculture Committee's report. Merchant Marine and Fisheries also filed report language to accompany the legislation (House Report 99-271, Part II). This report stated that "this Committee believes that further clarification of the term 'wetland' is necessary." The

report defines wetlands "on the basis of a predominance of hydrophytic vegetation and hydric soil" which the Committee felt was consistent with the identification of wetlands developed by the U.S. Fish and Wildlife Service for the purposes of the National Wetland Inventory. The report also states that "Failure to mention a wetland type specifically is not meant to exclude or exempt any class or group of wetlands from the provisions of this Act."

The Merchant Marine and Fisheries report also addressed the use of "minimal effects." The report states that the provision allowing production of agricultural commodities on wetlands where the producer's actions would have "minimal effects" should be "applied with great caution in recognition that most of this country's remaining wetlands are of considerable value." The effect of this language, as it accompanied the House bill, would have been to permit relatively little future agricultural production on wetlands that had not been previously cultivated.

The Merchant Marine and Fisheries Committee report does not address the issue of "grandfathering," the provision in H.R. 2100 that exempted, from both sodbuster and swampbuster, producers for producing an agricultural commodity on highly erodible land or converted wetland if the land was cultivated or set aside in any of the 1981-85 crop years.

The provisions of H.R. 2100, the Food Security Act of 1985, as reported by the House Committee on Agriculture, are found in House Report 99-271 (Part I). Title 12, Subtitle A contained provisions for the conservation of highly erodible lands and wetlands. The section-by-section description of this title of the Act, excerpted below, begins on page 281 of the Report.

"Sec. 1202(a) (1) provides that any person who, after enactment, produces during any crop year an agricultural commodity on highly erodible land or on converted wetland shall be ineligible for certain agricultural program benefits on any commodity the person produced during that crop year[.]"

"Sec. 1203(a) exempts, except as otherwise provided in section 1205(m) [which deals with highly erodible land entered into the CRP], a person who produces a commodity on highly erodible land or converted wetlands if the commodity was (1) produced on land cultivated for any of the 1981-1985 crops, or that was set-aside, diverted, or otherwise not cultivated pursuant to a USDA program to reduce production of an agricultural commodity, (2) planted before the date of enactment, (3) planted during any crop year beginning before the date of enactment, (4) produced on highly erodible land under a conservation system approved by a conservation district or determined adequate by the Secretary; (5)

produced on highly erodible land that is planted in reliance on the determination by the Soil Conservation Service that the land is not highly erodible land (but the exemption does not apply to any crop that we planted on any land after the Service determines that the land is highly erodible land); (6) produced on converted wetland if the land became converted wetland before the date of the enactment; or (7) produced on wetland that became converted wetland in accordance with a wetland conservation plan approved by a conservation district or the Secretary." (emphasis added.)

Legislative Action in the Senate

Hearing

The full Senate Committee on Agriculture, Nutrition, and Forestry held a hearing on April 15, 1985 on conservation issues. Of 16 witnesses, 6 addressed the issue of wetlands protection. As in the House, most of the discussion dealt with sodbuster and the CRP. Several of the witnesses that mentioned swampbuster did so in the context of "extending" sodbuster provisions to include wetlands. Witnesses making this proposal included Maureen Hinkle of the National Audubon Society; Ken Cook, agricultural consultant; and Ron Ellermeier of the Nebraska Chapter of the Sierra Club.

Committee Markup

The Committee met on July 12 to begin markup of the conservation provisions. As in the House, most of the discussion surrounded the provisions relating to sodbuster and the conservation reserve program. There was little discussion of swampbuster, and the Committee adopted staff recommendations on most points with relatively little discussion. The Committee considered a number of bills. Among those containing wetlands protection provisions were S. 1051, sponsored by Senator Zorinsky, and S. 1035, introduced by Senator Kasten.

S. 1051 exempted producers of commodities on wetlands that were converted prior to passage of the act. S. 1035 exempted (1) producers of commodities on wetlands that were converted prior to passage of the act and (2) producers of commodities on wetland whose production was possible as the result of a natural condition, such as drought. Neither bill categorically exempted all land previously cultivated. However, the Committee received a letter from Senator Kasten (see Appendix C) noting that "we do not need to bring more land into production, especially fragile land....In this connection, I am particularly hopeful that the Committee will see fit to approve 'swampbuster' language to discourage the conversion of wetlands to cropland." (emphasis added). This language suggests that the bill was prospective, intended to

apply to the future alteration of wetlands that had not already been converted into cropland (i.e., cultivated in the past).

The Committee discussed the definition of "wetlands." Senator Heflin noted that the issue was of some concern and deserved careful consideration because it could have a rather substantial impact. The Chairman entered into the record a letter from Senator Gramm of Texas, in which the Senator expressed his concern about the "identification of wetland and converted wetland under the provision, the amount of land that would be classified as wetland if the provision would be enacted, and the amount of federal involvement that would be required to implement the provision." The Committee agreed to consider the definition at a subsequent session.

On July 18, the Committee returned to the conservation title. Mr. Peter Meyer of USDA explained to the committee that USDA had been working with environmental and wildlife groups on a definition of "wetlands." Mr. Meyer presented the latest proposed definition, which was nearly identical to that which subsequently became law. Mr. Meyer also presented proposed exemptions to swampbuster: (1) wetlands that could be farmed due to natural conditions, such as drought; (2) artificial or man-made wetlands; and (3) "small, low value wetlands as designated by the Secretary, that could incur within existing cropland, hay land, or pasture land." Mr. Meyer told the Committee that "We feel very strongly in the Department--ASCS and SCS--that [the small, low-value wetlands should be exempted]." The Committee members expressed few comments on the exemptions.

On July 19, Mr. Meyer presented to the Committee new language specifying exempted wetlands. The first two exemptions were essentially unchanged from the previous day. However, the third exemption had been revised: "Furthermore, the Secretary may exempt from provisions of this Act actions by producers, whose impact, cumulatively and individually, on the hydrological and biological values of wetlands are diminutive." Mr. Meyer reported that the environmental and wildlife groups were in agreement with this language. With little comment or debate, the Committee agreed to the language.

Because of the lack of discussion in the record, the Committee's intent regarding adoption of this language is not entirely clear. The Committee appears to have simply made a technical change from the previous day's language, and that it intended the language to allow the Secretary to exempt "small, low-value wetlands" from swampbuster provisions. The language was presented as acceptable by Mr. Meyer, who had stated the previous day that the Department felt "very strongly" that the Secretary should have the authority to exempt such wetlands.

The final report (Senate Report 99-145) of the Senate Agriculture Committee accompanying the bill, S. 1714, states that "It is also the Committee's intent that a person continue to be eligible for farm program benefits if the person produces an agricultural commodity on converted wetland, where the impact of such conversion on wetland functional values would be diminutive." (page 304). This language was apparently intended to apply to the "small, low-value wetlands as determined by the Secretary" discussed during the markup session. Mr. Meyer defined such areas as wetlands that "could occur as inclusions within existing cropland, hayland, or pastureland."

Conference Committee

The House-Senate conference met on Monday, December 9 to consider the conservation provisions. Senator Helms chaired the Conference Committee. Also present were Senators Dole, Boschwitz, Zorinsky, Melcher, and Pryor, and Representatives de la Garza, Foley, Jones, Rose, Bedell, Panetta, Huckaby, Whitley, Jeffords, Madigan, Coleman, Marlenee, Stangeland, and Smith. Representative Daschle, the original swampbuster sponsor in the House, was not present.

The conference record shows that many items were handled fairly quickly, with little discussion. The Senate Committee's General Counsel, Robert Franks, stated that he would "abbreviate a lot of the description of these, particularly the definitions, which I think a lot of them are technical definitions. Obviously, the critical definitions are of 'highly erodible land,' 'erosion-prone land,' and 'converted wetland.'" After some discussion of erodible lands, Mr. Franks said, "If there aren't any more questions--I'm not going to go through all these definitions." Representative de la Garza concurred with dispensing with the definitions.

Mr. Franks then proceeded through a list of differences between the House and Senate bills. Item no. 5, on page 10 of the Statement of Differences, dealt with a "House provision that specifies that land that is set-aside, diverted, or otherwise not cultivated under USDA programs during any of the '81 through '85 crops, would be exempt from the provisions of the highly erodible land section. The staff recommendation is that the Senate recede to the House on that item." The Senate receded to the House on this provision.

The section of the House bill (HR. 2100) that provided this exemption for highly erodible land was section 1203 (a)(1). The same provision also exempted wetlands. The

record does not show that the Committee considered this difference as it applied to wetlands conservation provisions.

A subsequent difference discussed by the Committee was the House bill's provision for exempting from swampbuster land that was drained in compliance with a conservation plan approved by the local conservation district or the Secretary (Section 1203(a)(7) of H.R. 2100). The Senate bill contained no comparable provision. The House receded to the Senate with virtually no discussion. The removal of that provision from the House bill, however, essentially negated one of Representative Daschle's principal arguments in favor of swampbuster--namely, that local officials would be able to determine on a case-by-case basis (1) whether a given area was a wetland and (2) whether farmers could alter them if alteration was in compliance with a locally-approved plan.

The House also receded, without comment or discussion, to the Senate's language on "minimal effects" determinations. However, the minimal effects language in the Senate bill was in the section on "Exemptions;" it allowed the production of agricultural commodities on wetlands if such production had a "minimal effect" on the wetland values. The provision did not address whether or not such wetlands may have been cultivated in the past.

The change in "minimal effects" language is significant, given the report of the House Committee on Merchant Marine and Fisheries. Applied to the House bill, that report in effect would have restricted the Secretary's discretion to use a "minimal effects" determination to allow subsidies for commodity production on wetlands that had not been cultivated for any of the 1981 to 1985 crop years. But applied to the Senate language on "minimal effects," the report would have the effect of restricting the Secretary's discretion to exempt land from swampbuster, whether or not it was previously cultivated.

Appendix A

AN AMENDMENT TO THE COMMITTEE PRINT
OF HR2100

Offered by Mr. Daschle of South Dakota

Following Section 1205 of the Committee Print, insert the following new Section, and renumber subsequent Sections accordingly:

Sec. 1206. As used in this Section--

(1) the term "agricultural commodity" means any agricultural commodity planted and produced by annual tilling of the soil, including one-trip planners;

(2) the term "wetland", except when such term is part of the term "converted wetland", means land that

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2-3

1 is inundated or saturated by surface or groundwater at a
2 frequency and duration sufficient to support, and that
3 under normal circumstances does support, a prevalence of
4 vegetation typically adapted for life in saturated soil
5 conditions;

6 (3) the term "converted wetland" means land [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] that has been drained,
11 dredged, filled, leveled, or otherwise manipulated
12 (including any activity which results in impairing or
13 reducing the flow, circulation, or reach of water) for
14 the purpose or to have the effect of making the
15 production of agricultural commodities possible if--

16 (A) such production would not have been possible
17 but for such action; and

18 (B) before such action--

19 (i) such land was wetland; and

20 (ii) such land was neither highly erodible
21 land nor highly erodible cropland, as defined in
22 section 1201(4); and

23 (4) the term "Secretary" means the Secretary of
24 Agriculture unless the context specifies otherwise.

25 PROGRAM INELIGIBILITY

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1 SEC. 203. Except as provided in section 204, any person
2 who plants an agricultural commodity on converted wetland for
3 harvest shall be ineligible for--

4 (1) any type of price support or payments made
5 available under the Agricultural Act of 1949 (7 U.S.C.
6 1421 et seq.), the Commodity Credit Corporation Charter
7 Act (15 U.S.C. 714 et seq.), or any other Act;

8 (2) farm storage facility loans under section 4 of
9 the Commodity Credit Corporation Charter Act (15 U.S.C.
10 714b(h));

11 (3) crop insurance under the Federal Crop Insurance
12 Act (7 U.S.C. 1501 et seq.);

13 (4) diaster payments under the Agricultural Act of
14 1949 (7 U.S.C. 1421 et seq.); and

15 (5) loans made, insured, or guaranteed under the
16 Consolidated Farm and Rural Development Act (7 U.S.C.
17 1921 et seq.) or any other provision of law administered
18 by the Farmers Home Administration;
19 with respect to any commodity planted after the date of the
20 enactment of this Act by such person for harvest.

21 EXEMPTIONS

22 SEC. 204. (a) Section 203 shall not apply to any person
23 who produces an agricultural commodity on land which is
24 converted wetland if such land became converted wetland
25 before the date of enactment of this Act.

(b) Section 203 shall not apply with respect to any loan made before the date of enactment of this Act.

CONSULTATION WITH THE SECRETARY OF THE INTERIOR

Sec.205. The Secretary shall consult with the Secretary of the Interior for the purpose of issuing regulations under section 301(c) with respect to identifying, establishing criteria to identify, wetland and converted wetland.

Appendix B

AMENDMENT TO TITLE XII, RESOURCE CONSERVATION,
OF H.R. 2100, AS AGREED TO BY THE COMMITTEE

Offered by Mr. Daschle

Strike out sections 1201 through 1203, and 1206 through 1209, and insert in lieu thereof the following:

"DEFINITIONS

"SEC. 1201. As used in this title--

"(1) the term 'agricultural commodity' means any agricultural commodity planted and produced by annual tilling of the soil, or on an annual basis by one-trip planters;

"(2) the term 'conservation district' means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program, whether referred to as a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar name;

"(3) the term 'converted wetland' means land that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity which results in impairing or reducing the flow, circulation, or reach of water) for the purpose or to have the effect of making the production of agricultural commodities possible if--

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"(A) such production would not have been possible but for such action; and

"(B) before such action--

(i) such land was wetland; and

(ii) such land was neither highly erodible land nor highly erodible cropland, as defined in this section.

"The term does not include (A) artificial lakes or ponds created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation, settling basins, cooling, rice production, or flood control, (B) wet areas created by water delivery systems or the application of water for irrigation, (C) wetlands on which production of agricultural commodities is possible as a result of natural conditions, such as drought, and without actions by the producer that destroy natural wetland characteristics, or (D) wetlands on which such production is possible as a result of actions by the producer whose cumulative and individual impact on the hydrological and biological values of the wetlands is minimal, determined by the Secretary under regulations prescribed by the Secretary in consultation with the Secretary of the Interior;

"(4) the term 'field' means that term as defined in section 718.2 of title 7 of the Code of Federal Regulations, except that any highly erodible land and any converted wetland on which an agricultural commodity is produced after the date of enactment of this title and that is not exempt under section 1203 shall be considered as part of the field in which such land was

included on the date of enactment, and except further that the Secretary shall provide for modification of the boundaries of fields to effectuate the purposes and facilitate the practical administration of this title;

"(5) the term 'highly erodible land' means land--

"(A) that is classified by the Soil Conservation Service of the Department of Agriculture as class IVe, VI, VII, or VIII land under the land capability classification system in effect on the date of enactment of this title; or

"(B) that would, if used to produce an agricultural commodity, have an excessive rate of erosion, in relation to the soil loss tolerance level as established by the Secretary, and as determined by the Secretary through application of factors from the universal soil loss equation and the wind erosion equation, including factors for climate, soil erodibility, and field slope. The land capability class or rate of erosion for a field shall be that determined by the Secretary to be the predominant class or rate of erosion under regulations issued by the Secretary;

"(6) the term 'highly erodible cropland' means highly erodible land that is in cropland use, as determined by the Secretary;

"(7) the term 'Secretary' means the Secretary of Agriculture; and

"(8) the term 'wetland', except when such term is part of the term 'converted wetland', means land that is inundated or

saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

"PROGRAM INELIGIBILITY FOR PRODUCTION ON HIGHLY ERODIBLE LAND
OR CONVERTED WETLAND

"SEC. 1202.(a) Except as provided in section 1203 and notwithstanding any other provision of law, following the date of enactment of this title any person who in any crop year produces an agricultural commodity on highly erodible land or on converted wetland shall be ineligible, as to any commodity produced during that crop year by such person, for--

"(1) any type of price support or payments made available under the Agricultural Act of 1949, the Commodity Credit Corporation Charter Act, or any other Act;

"(2) a farm storage facility loan under section 4(h) of the Commodity Credit Corporation Charter Act;

"(3) crop insurance under the Federal Crop Insurance Act;

"(4) a disaster payment under the Agricultural Act of 1949; or

"(5) a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act or any other provision of law administered by the Farmers Home

Administration, if the Secretary determines that such loan will be used for a purpose that will contribute to excessive erosion of highly erodible land, or conversion of wetlands (other than as provided in this section) to produce agricultural commodities.

"(b) The Secretary shall issue regulations defining the term 'person' and prescribing rules to govern determinations of persons who shall be ineligible for program benefits under this section so as to ensure fair and reasonable determination of ineligibility, including regulations that protect the interests of landlords, tenants, and sharecroppers. The ineligibility under subsection (a) of a tenant or sharecropper for benefits shall not cause a landlord to be ineligible for benefits for which the landlord would otherwise be eligible with respect to commodities produced on fields or converted wetlands other than those operated by the tenant or sharecropper.

"EXEMPTIONS

"SEC. 1203.(a) No person shall become ineligible for program loans, payments, and benefits, as provided under section 1202, as the result of the production of a crop of an agricultural commodity--

"(1) except as otherwise provided in section 1205(m), on any land that was cultivated to produce any of the 1981 through 1985 crops of agricultural commodities or that was set-aside, diverted, or otherwise not cultivated under

provisions of a Department of Agriculture program for any such crops to reduce production of an agricultural commodity;

"(2) planted before the date of enactment of this title;

"(3) planted during any crop year beginning before the date of enactment of this title;

"(4) on highly erodible land in an area (A) within a conservation district under a conservation system that has been approved by the conservation district after it has been determined that the conservation system is in conformity with technical standards set forth in the Soil Conservation Service technical guide for that conservation district, or (B) not within a conservation district under a conservation system determined by the Secretary to be adequate for the production of an agricultural commodity on highly erodible land;

"(5) on highly erodible land if the land was planted in reliance on the determination by the Soil Conservation Service that the land was not highly erodible land, but the exemption under this paragraph shall not apply to any crop that was planted on any land after the Soil Conservation Service determines the land to be highly erodible land;

"(6) on converted wetland if the land became converted wetland before the date of enactment of this title; or

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"(7) on wetland that became converted wetland (A) within a conservation district, in accordance with a wetland conservation plan that has been approved by the conservation district under regulations prescribed by the Secretary in consultation with the Secretary of the Interior acting through the U.S. Fish and Wildlife Service, or (B) not within a conservation district, in accordance with a wetland conservation plan that has been approved by the Secretary under regulations prescribed by the Secretary in consultation with the Secretary of the Interior acting through the U.S. Fish and Wildlife Service.

"(b) The provisions of section 1202 shall not apply to any loan made before the date of enactment of this title."

ROBERT W. KASTEN, JR.
WISCONSIN

Appendix C

United States Senate
WASHINGTON, D.C. 20510

July 12, 1985

The Honorable Jesse Helms
Chairman
Senate Committee on Agriculture
Nutrition and Forestry
SR 328
Washington, D.C. 20510

Dear Jesse:

I want to let you know how pleased I am with the progress that I understand the Agriculture Committee has made on the conservation title of the farm bill. I understand the difficulties the Committee faces in this troubled time for agriculture, and appreciate your efforts to craft legislation our farmers will be able to depend on for years to come.

There is one issue I would like to draw your attention to as the Committee continues its consideration of the conservation provision. In these times of chronic farm surpluses, it is imperative that we not allow federal farm subsidies and incentives to encourage the development of still more productive capacity. Put simply, we do not need to bring more land into production, especially fragile land.

In this connection, I am particularly hopeful that the Committee will see fit to approve "swampbuster" language to discourage the conversion of wetlands to cropland. Such conversion, if it is profitable in its own right, is something the government has no business interfering in. But to encourage conversion by assuring the availability of crop subsidies, cut-rate loans and crop insurance premiums, and other farm program benefits is clearly not in the public interest.

At least as important as the environmental reasons for protecting wetlands is the overriding interest of the American farmer in addressing the problem of excess capacity in agriculture. Subsidies aimed at improving farmer's income are always tempting, but subsidies for converting wetlands are subsidies for increased production, which leads to lower farm prices, necessitating still more subsidies.

It is past time we broke this vicious circle. Including swampbuster language such as that in the Fragile Lands Conservation and Wetland Protection Act (S. 1035) would be a bold move in the interest of both the American environment and the American farmer.

Best regards,


Robert W. Kasten, Jr.

RWK:jeb

Senator CONRAD. Very good, underline laborious. Mr. Hertz, you have looked at that record. Our reading of it is very clearly that there was not intent by Congress that land which had previously been cropped be included. Is that your reading of the history?

Mr. HERTZ. Yes.

Senator CONRAD. And Mr. Scaling, could you respond to that question as well?

Mr. SCALING. Yes sir.

Senator CONRAD. That is your reading of congressional intent as well? I am glad to get that on the record, Mr. Chairman. Because I think it is abundantly clear that, that is what was intended. Now, let me followup: Do the regulations that we have in place reflect that?

Mr. HERTZ. Yes, they do.

Senator CONRAD. Let me pursue that one step further. Would you extend that to the question of draining?

Mr. BRIDGE. If it were extended.

Senator CONRAD. Under the current regulations could you drain something that had previously been cropped?

Mr. BRIDGE. No sir.

Senator CONRAD. You could not. And yet, the answer to the first question was that Congress did not intend to include land that had previously been cropped. Was it not the intent of Congress that this applied to land which would be converted in the future? As I understood your answer previously, you indicated that it was not the intent of Congress to apply this to land which had previously been cropped.

Mr. HERTZ. Senator Conrad, I believe my interpretation of that would be to say that, and I think you are probably referring to lands that maybe have a slight depressional area and water may stand in that area for 2 weeks, and the farmer would like to go in and farm the whole field all at one time.

Senator CONRAD. Precisely right.

Mr. HERTZ. Our interpretation of that would be that if he had to wait 2 weeks to farm it before, he will have to wait 2 weeks to farm it now.

Senator CONRAD. But in the past the farmer, and we have situations in which the farmer would drain that, in the past. Now you are saying that the regulations would preclude him from draining it now?

Mr. HERTZ. Yes.

Senator CONRAD. Now, our reading of congressional intent is that, that flies in the face of what Congress intended. That Congress intended these provisions to apply to future conversions. Do you disagree with that?

Mr. HERTZ. Well, I think anything after the enactment of the legislation becomes a future conversion.

Senator CONRAD. No.

Mr. HERTZ. And I think the intent was to stop those conversions.

Senator CONRAD. No. Future conversions in the sense that these were areas not drained previously.

Mr. HERTZ. Galen, why don't you respond to that.

Mr. BRIDGE. Let me see if I can clarify this a little. I think their reply to you of the early, yes, was that anyone that is presently

farming out there, can continue to farm exactly as they have been in the past. I think we do need to understand that there are wetlands that are farmed, and if they are included in the definition of a wetland you may be planting a crop on that. It may be dry enough to do 1 year out of 5, 2 years out of 5, or whatever. But that is still a wetland.

Senator CONRAD. Let me go back to get us on track. Because I don't think that is on the track. What farmers, I find, one of the things that they are upset about, and I would disagree with Mr. Hertz to this degree. They are still very upset in my State about two elements, penalties and nuisance spots. I think it is abundantly clear, from the record, that the intent of Congress was that previously cropped land was exempt. You could drain it. You could continue to farm as you always had. And I have provided for the record here that legislative history. Now when we go to the question of the regulations that have been put in place, what I hear you saying is, yes, you can farm that. But you cannot farm it the way you have done it before. You have got to wait. You cannot drain it. Very frankly, I do not find that was the intent of Congress. I could read for you endless dialog that occurred, especially on the House side, in which they went over and over and over with Senator Daschle, who was the sponsor, indicating there is not the intent to go back to land that had previously been cropped and to prevent that from being farmed the way it had been before. So again, I put the question to you. Do you believe that these regulations embody the intent of Congress at the time it passed swampbuster?

Mr. BRIDGE. My reaction is yes, they do.

Senator CONRAD. I am asking Mr. Hertz and Mr. Scaling.

Mr. HERTZ. Well, Senator I would respond to say that ASCS was one of the agencies, one of the players in developing those regulations. And I think as we involved the other agencies represented here today, the entire, you might say it was the agricultural initiative to implement the conservation issues. It was our judgment collectively, that we did reflect the intent of Congress in writing these regulations.

Senator CONRAD. Well, let the record show that is a different answer than the answer you gave me in my office a number of weeks ago, when you told me specifically, that you did not think these regulations embodied the intent of Congress. And the reason for that is the report language that is in the bill.

Mr. HERTZ. I do not remember referring to the report language, Senator. I do remember our conversation and whether I suggested that I did not agree whether these regs apply to the intent of Congress. I think we argued about it at that time, too.

Senator CONRAD. No, I think it was quite clear that you indicated to me that you did not believe these regulations embodied the intent of Congress. And that you were forced to write the regulations as you did because of the report language. And I do not think there was any room for misunderstanding since we went over it two or three times. And I am disappointed to hear today that now you have changed your position.

Mr. HERTZ. I am sure, Senator, that if ASCS alone were able to write those regulations they probably would have had a different flavor, than the collective judgment of all agencies.

Senator FOWLER. Let me interrupt. Certainly, you can come back in, but just a couple things just to help at least my understanding. Let me ask Mr. Lambertson, and then we can get some agreement or disagreement from Mr. Hertz and Mr. Scaling. Does the Service, along the lines we were discussing, does the Service have any estimate of the amount of acreage that would be involved if currently cropped wetlands, under Senator Conrad's understanding of that term, were to be totally exempted from the swampbuster program?

Mr. LAMBERTSON. I don't have the exact figure, but I can provide that. The estimate we have is that 60 percent of the waterfowl production wetlands in the prairie pothole areas are associated with temporary wetlands of the type that are being discussed here. In other words 60 percent of the waterfowl are dependent on those wetlands and 60 percent of the wetlands that are in contention are these shallow seasonal type of wetlands—60 to 70 percent.

[The material follows:]

The U.S. Fish and Wildlife Service estimates that well over 3.7 million acres nationwide would be affected if currently cropped wetlands were to be exempted from swampbuster. In North Dakota alone, 1.5 million acres would be affected.

Senator CONRAD. Would the Chairman just yield on that point, because I would like to clarify. I do not know if you are familiar with the article, "Ecological Distribution of Breeding Waterfowl Populations in North Dakota" that was written by researchers Stewart and Kantrude.¹ That reported the results of a 3-year study of breeding waterfowl in the prairie pothole area. Let me just refer to that study which concluded that ephemeral ponds, class I wetlands, comprised 9 percent of the number of wetlands, yet accounted for less than one-half of 1 percent of the observed breeding waterfowl population. Would you agree or disagree with that observation from that article?

Mr. LAMBERTSON. I am not familiar with that. I have not read that specifically, but ephemeral areas are the very shallow wetlands that might be wet for only a few days, so that is probably a reliable estimate.

Senator CONRAD. So that is what I am really talking about here and what I find farmers objecting to. They are saying wait a minute. This is unreasonable, it is irrational. Can't we be reasonable with each other? What I get when I talk to the environmental groups is no, that is it. Everything has got to be just the way it was. And when we go back and look at the intent of Congress it flies in the face of what we are doing. And you come in and talk about everything is important, and I hear the same thing. You know when we look at other people's studies, objective studies, they say these class I wetlands, of the kind we are referring to, comprise 9 percent of the wetlands, yet account for less than one-half of 1 percent of the breeding waterfowl.

Somehow we have got to be reasonable here.

Mr. LAMBERTSON. Senator Conrad, if I could respond to that. At Jamestown, North Dakota, we have a major research facility that has a computer that will analyze what would happen to the waterfowl production in the prairie pothole area under various land use

¹ From the "Journal of Wildlife Management," vol. 37, No. 1, January 1973, pp. 39-50.

practices. And we requested of them, just last week, to analyze what would happen if we removed from the prairie pothole country of North Dakota, South Dakota, and Minnesota, the temporary ephemeral wetlands—those that are wet up to 30 days. Their estimate is that 60 to 70 percent of the waterfowl population is dependent on those wetlands.

Senator CONRAD. Well, there is something greatly at odds here, isn't there? Between what these researchers report and what you are reporting. We get something quite different. In fact, their conclusion was, it is apparent, I am quoting now, "... it is apparent that seasonal class III ponds and semipermanent class IV ponds and lakes represent the primary wetland habitats of breeding waterfowl." Let me just follow up. If we have had this kind of destruction of waterfowl habitat.

Senator BOSCHWITZ. Would you yield?

Senator CONRAD. If I could just conclude this point and then I would be happy to yield to my friend. If we have had this kind of destruction of habitat, are you familiar with the duck numbers in North Dakota over the last 30 years?

Mr. LAMBERTSON. Yes, we do have charts on that, yes, sir.

Senator CONRAD. And what do your charts show? I would be interested in that because my charts show we have had an increase. Our duck population today is higher than it was 30 years ago.

Mr. LAMBERTSON. Senator Conrad, 1987 was an unusual year in North Dakota. It was a wet year. Generally, the waterfowl populations in the United States have been declining since 1955. We started out with a breeding population in 1955 of 45 million waterfowl. We are currently at 33 million.

Senator CONRAD. No, I am asking North Dakota now. North Dakota is the focus of my concern and we have heard all this testimony, and we will have more testimony about the tremendous destruction of wildlife habitats in North Dakota. I have got the duck numbers for 30 years. And we have more ducks now than we had 30 years ago. And if you take 10-year averages into three segments, you will find increases. The average over the last 10 years is 40 percent above the average for the 10 years from 1958 to 1967. Would you dispute those figures?

Mr. LAMBERTSON. I can dispute the figure on 1987. 1987 was a very unusual year and the prairie pothole—

Senator CONRAD. No, I am talking the last 10 years now, 40 percent increase the last 10 years over the period from 1958 to 1967. Would you dispute those numbers?

Mr. LAMBERTSON. That is certainly in disagreement with what I have before me, sir. I would be glad to take those numbers and provide a response for the record that has a professional analysis of those numbers and explanations.

[The material follows:]

The information cited is from the U.S. Fish and Wildlife Service's Waterfowl Breeding Population Surveys for the past 30 years for North Dakota.

On their face, these surveys do indicate that waterfowl breeding populations in North Dakota have been higher in the 10-year period from 1978 through 1987 than they were in a 10-year period from 1958 through 1967. However, the numbers represent all ducks, including species which do not reflect the condition of the wetland type under discussion at the hearing.

For instance, the figures include a group of ducks commonly referred to as diving ducks, such as scaup and ringneck, which commonly utilize deeper wetland areas for their mating and breeding activities. In recent years diving ducks have experienced significant population increases in North Dakota—144 percent, using the same period of comparison—which masks population declines in species more ecologically adapted to the ephemeral, temporary and seasonal wetlands under discussion.

One species whose mating and breeding habits can be tied directly to the wetland types that are the subject of the hearing is the pintail, which use these wetlands almost exclusively. Pintail numbers have fallen to seriously low levels in recent years as a result of the loss of these wetland types. Pintail populations have experienced a 21 percent decline over the past 20 years.

In addition, isolating on North Dakota population figures is not representative of the overall status of the Continental waterfowl population. The fact that some of these species are currently not as bad off in North Dakota as across the continent is due in part to favorable local climatic conditions (more surface water) in that state in recent years coupled with extremely dry conditions in the Canadian portion of the prairie pothole region.

This further emphasizes the importance of North Dakota's wetlands to the future of our continental waterfowl populations. During any year the wetlands of a specific area, such as Minnesota, North Dakota or the Canadian provinces, may have to support more than a proportional share of the breeding waterfowl population, due to unfavorable conditions in another area.

Senator CONRAD. The numbers that we have are from the Fish and Wildlife Service and I would want to enter them into the record at this point, Mr. Chairman.

Senator FOWLER. Without objection, they will be.

[The material follows:]

Table 8. Long-term trend in waterfowl breeding population estimates by species in North Dakota, 1955-87 (estimates in thousands).

Species	1955*	1956*	1957*	1958	1959	1960	1961	1962	1963	1964	1965
Ducks:											
Dabblers:											
Mallard	486.9	486.9	486.9	422.9	176.7	308.5	290.7	307.3	547.9	398.0	455.8
Black duck	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Gadwall	262.7	262.7	262.7	57.1	17.1	108.8	142.9	395.5	434.3	173.1	435.0
Wigeon	74.6	74.6	74.6	81.9	82.7	75.5	16.7	12.8	48.8	16.7	17.9
G. W. Teal	39.0	39.0	39.0	5.8	0.0	0.0	8.7	0.0	12.1	0.0	12.1
B. W. Teal	820.8	820.8	820.8	499.8	298.2	466.2	417.4	1020.9	888.0	587.2	935.2
Northern Shoveler	226.3	226.3	226.3	56.4	40.7	166.1	99.6	253.6	229.7	86.9	390.8
Pintail	482.5	482.5	482.5	299.4	56.2	566.9	253.0	441.1	351.5	414.5	501.6
Subtotal	2393.0	2393.0	2393.0	1423.3	671.6	1691.9	1229.0	2431.1	2512.3	1676.5	2748.5
Divers:											
Redhead	106.8	106.8	106.8	30.2	13.5	78.9	34.9	80.9	86.7	47.2	135.2
Canvasback	29.6	29.6	29.6	35.0	7.8	15.0	3.5	2.5	17.0	19.7	22.4
Scaup	29.4	29.4	29.4	10.4	21.4	40.8	17.2	80.1	16.2	1.3	10.2
Ringneck	4.9	4.9	4.9	0.0	0.0	20.0	0.0	0.0	5.9	0.0	0.0
Goldeneye	0.2	0.2	0.2	0.0	0.0	0.0	0.0	0.0	0.1	0.0	0.1
Bufflehead	0.4	0.4	0.4	0.0	0.0	0.0	0.0	0.0	0.2	0.0	0.2
Ruddy duck	95.9	95.9	95.9	3.8	56.6	105.2	55.4	65.3	43.5	12.8	21.4
Subtotal	267.2	267.2	267.2	79.4	99.3	259.9	111.0	228.8	169.6	81.0	189.5
Miscellaneous:											
Oidsquaw	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Eider	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Scoter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Merganser	0.3	0.3	0.3	0.0	0.0	0.0	0.0	0.0	0.3	0.0	0.3
Subtotal	0.3	0.3	0.3	0.0	0.0	0.0	0.0	0.0	0.3	0.0	0.3
Total Dabblers & Divers	2660.2	2660.2	2660.2	1502.7	771.0	1951.8	1340.0	2659.9	2681.9	1757.5	2938.3
TOTAL DUCKS	2660.2	2660.2	2660.2	1502.7	771.0	1951.8	1340.0	2659.9	2682.2	1757.5	2938.1
Coots	276.3	276.3	276.3	160.7	266.5	231.4	133.5	275.1	180.1	56.8	346.1
Geese											
Canada geese											

From: US Fish & Wildlife Service
Waterfowl Breeding Population Survey, 1987
for South Dakota and North Dakota.

* Based on average

Table 8 (cont). Long-term trend in waterfowl breeding population estimates by species in North Dakota, 1955-87
(estimates in thousands).

3,160,000

2,938,000

Species	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
Ducks:											
Dabblers:											
Mallard	374.6	506.6	684.6	485.4	308.6	466.5	398.9	550.3	361.4	487.7	582.6
Black Duck	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Gadwall	168.5	244.0	410.4	224.3	255.5	381.2	435.0	528.9	274.1	287.7	311.0
Wigeon	97.1	182.0	144.1	212.5	353.3	358.8	127.3	329.7	219.6	101.3	184.3
G. W. Teal	18.9	37.0	58.7	120.2	70.4	99.3	28.1	29.1	80.4	35.1	54.4
B. W. Teal	282.1	737.3	934.8	888.5	252.7	906.3	545.7	861.1	547.0	959.2	606.2
Northern Shoveler	84.6	277.5	472.5	193.7	264.1	646.4	367.1	563.5	306.4	250.4	264.6
Pintail	91.1	588.5	560.2	291.8	135.2	369.4	329.4	375.4	203.9	260.0	191.6
Subtotal	1116.9	2572.9	3265.3	2416.4	1639.8	3227.9	2231.5	3238.0	1992.8	2381.4	2194.7
Divers:											
Redhead	36.8	198.3	204.8	264.6	80.9	251.7	243.3	174.2	118.4	257.7	305.2
Canvasback	13.9	24.4	64.4	42.5	20.2	34.3	12.2	58.6	36.7	45.9	55.1
Scaup	17.4	94.1	252.5	44.6	108.6	103.9	224.2	120.8	102.4	140.4	105.7
Ringneck	9.3	13.0	57.4	24.8	0.0	50.7	41.5	15.0	23.6	12.7	13.6
Goldeneye	0.0	0.0	0.0	0.0	0.0	0.0	2.8	1.5	0.0	0.0	1.2
Bufflehead	0.0	0.9	2.3	1.4	0.9	0.6	3.4	6.6	0.5	0.8	0.0
Ruddy Duck	20.5	111.7	135.2	100.3	218.6	400.7	240.5	357.7	184.2	299.1	322.7
Subtotal	97.9	442.4	716.6	478.2	429.2	841.9	767.9	734.4	465.8	756.6	803.5
Miscellaneous:											
Oidsquaw	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Eider	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Scoter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Merganser	0.0	0.0	0.0	0.0	0.0	0.2	3.9	1.6	0.3	0.0	0.3
Subtotal	0.0	0.0	0.0	0.0	0.0	0.2	3.9	1.6	0.3	0.0	0.3
Total Dabblers & Divers	1214.9	3015.3	3981.9	2894.6	2069.0	4069.8	2999.4	3972.4	2458.6	3138.0	2998.2
TOTAL DUCKS	1214.9	3015.3	3981.9	2894.6	2069.0	4070.0	3003.3	3974.0	2458.9	3138.0	2998.5
Coots	91.8	379.5	1386.6	397.9	378.0	562.9	419.5	907.9	321.0	314.2	531.7
Geese											
Canada geese	1.4	0.3	0.9	1.3	2.6	5.4	2.9	5.0	4.1	6.1	4.4

Table 9. North Dakota - status of adjusted waterfowl breeding population estimates by species and stratum, comparing 1987 with 1986 and the ten-year (1977-1986) and long-term (1955-1986) means (estimates in thousands).

Species	Strata (1987)				Total 1987	Total 1986	10-year Long-term		Percent change from	
	43	45	46	47			Mean	Mean	1986	10-year Mean
Ducks:										
Dabblers:										
Mallard	127.6	331.6	117.6	5.8	582.6	487.7	462.5	480.8	+ 19	+ 21
Black Duck	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	--	--
Gadwall	54.6	179.7	75.0	1.7	311.0	287.7	321.0	279.9	+ 08	+ 11
Wigeon	12.7	143.3	28.3	0.0	184.3	101.3	212.6	129.6	+ 82	+ 42
G. W. Teal	12.9	31.1	10.4	0.0	54.4	35.1	57.7	46.8	+ 55	+ 16
B. W. Teal	91.5	301.8	201.8	11.1	606.2	959.2	691.5	780.4	- 37	- 22
Northern Shoveler	39.0	139.5	84.9	1.2	264.6	250.4	342.6	229.0	+ 06	+ 02
Pintail	57.9	81.7	51.2	.8	191.6	260.0	320.5	422.5	- 26	- 55
Subtotal	396.2	1208.7	569.2	20.6	2194.7	2381.4	2408.3	2399.0	- 08	- 09
Divers:										
Redhead	4.2	211.5	89.5	0.0	305.2	257.7	183.1	135.3	+ 18	+126
Canvasback	0.0	41.3	13.8	0.0	55.1	45.9	35.3	31.0	+ 20	+ 78
Scaup	24.0	64.1	17.6	0.0	105.7	140.4	120.9	60.8	- 25	+ 74
Ringneck	0.0	7.5	6.1	0.0	13.6	12.7	24.8	11.2	+ 07	+ 21
Goldeneye	0.0	0.0	1.2	0.0	1.2	0.0	0.4	0.2	--	+500
Bufflehead	0.0	0.0	0.0	0.0	0.0	0.8	1.7	0.8	--	--
Ruddy Duck	0.0	243.3	79.4	0.0	322.7	299.1	206.9	129.4	+ 08	+149
Subtotal	28.2	567.7	207.6	0.0	803.5	756.6	573.1	368.7	+ 06	+118
Miscellaneous:										
Oldsquaw	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	--	--
Eider	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	--	--
Scoter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	--	--
Merganser	0.0	0.3	0.0	0.0	0.3	0.0	0.6	0.4	--	--
Subtotal	0.0	0.3	0.0	0.0	0.3	0.0	0.6	0.4	--	--
Total Dabblers & Divers	424.4	1776.4	776.8	20.6	2998.2	3138.0	2981.4	2767.7	- 04	+ 08
TOTAL DUCKS	424.4	1776.7	776.8	20.6	2998.5	3138.0	2982.0	2768.1	- 04	+ 08
Coots	11.1	325.4	195.2	0.0	531.7	314.2	515.9	*	+ 69	+ 03
Geese										
Canada geese	0.2	3.3	0.9	0.0	4.4	6.1	3.0	*	- 28	+ 47
* Not available										

* Not available

Table 11. North Dakota - long-term trend in pond estimates by stratum, comparing 1987 with 1986 and the previous 10-year average (estimates in thousands).

	Strata				Total
	43	45	46	47	
1958	39.7	132.3	82.6	8.7	263.3
1959	21.5	66.3	22.1	13.0	122.9
1960	17.6	241.7	98.7	9.6	367.6
1961	11.8	38.2	26.3	9.6	85.9
1962	25.5	132.7	97.1	17.4	272.7
1963	59.2	206.2	150.9	17.4	433.7
1964	29.4	107.3	41.4	10.4	188.5
1965	59.2	199.5	103.8	13.9	376.4
1966	59.2	265.6	182.9	36.5	544.2
1967	50.1	311.6	168.9	29.9	560.5
1968	54.0	141.1	109.8	11.7	316.6
1969	89.5	326.0	169.8	31.6	616.9
1970	101.5	472.7	152.3	29.3	755.7
1971	109.4	365.3	87.4	17.0	579.1
1972	130.9	338.0	147.9	35.3	652.1
1973	88.4	167.3	54.0	11.0	321.5
1974*	189.6	321.5	60.6	19.4	591.1
1975	104.9	703.4	285.9	41.4	1135.6
1976	84.0	505.1	221.8	37.4	848.3
1977	88.2	179.2	60.1	12.8	340.3
1978	123.7	304.2	195.2	14.2	637.3
1979	86.9	447.4	268.5	32.9	835.7
1980	65.4	179.5	89.4	11.1	345.4
1981	70.3	208.4	55.2	9.7	343.6
1982	140.5	443.1	183.4	19.0	786.0
1983	80.0	398.1	147.5	23.3	648.9
1984	113.9	554.6	269.3	27.7	965.5
1985	120.5	343.9	122.4	17.0	603.8
1986	120.0	381.1	201.7	25.8	728.6
1987	134.4	280.9	170.2	15.0	600.5
Average	100.9	344.0	159.3	19.4	623.5
<u>Percent Change:</u>					
1987 from 1986	+ 12	- 26	- 16	- 42	- 18
1987 from average	+ 33	- 18	+ 07	- 23	- 04

*Beginning in 1974, pond density estimates are adjusted to reflect visibility bias.

Mr. BOSCHWITZ. I just need to go, Mr. Chairman, and I do not see my Agriculture Commissioner out there, and he is suppose to testify. If he is out there I would like to chat with him for a moment.

Senator FOWLER. There he is, over there.

Mr. BOSCHWITZ. Oh, he is sitting over here.

Senator FOWLER. I will watch him for you. Mr. Hertz, we need to, and I am not going to cut Senator Conrad off with all the Government leaders here in these areas, but again, just to get a few more facts that we may or may not agree on before the committee. Can you tell us how many farmers have actually lost farm program benefits as a result of being found in violation of the sodbuster or the swampbuster provisions?

Mr. HERTZ. At this point and time between the sodbuster and swampbuster there are about 110.

Senator FOWLER. 110 farmers.

Mr. HERTZ. Yes.

Senator FOWLER. Period.

Mr. HERTZ. There are additional—

Senator FOWLER. How about how many? Maybe that is what you are about to say. How about how many farmers who have been found by ASCS to be in violation who are appealing that decision? Is that in your numbers?

Mr. HERTZ. Yes. My response is going to be that there are approximately another 500 that would be in the investigation appeal process.

Senator FOWLER. Nationwide?

Mr. HERTZ. Yes.

Senator FOWLER. How about North Dakota?

Mr. HERTZ. If I remember the numbers it seems to me that in North Dakota there was—maybe I even have it here.

Senator CONRAD. 150?

Mr. HERTZ. There are 14 pending swampbuster determinations. And we have received comments on another 279 that we would be looking at.

Senator CONRAD. What does that mean, Milt? I think we ought to, if the Chairman would yield on that? What does it mean that you have received comments on? Does that mean Fish and Wildlife has flown over in a plane and sent in a report they see some draining going on?

Mr. HERTZ. There are several methods of compliance. Neighbors are one of the biggest.

Senator CONRAD. But would that include, would the 270 include—

Senator FOWLER. What is that?

Mr. HERTZ. One neighbor will see another neighbor doing something and just cannot wait to tattle on him. [Laughter.]

They are our best compliance folks. Believe me, in all of our programs.

Senator CONRAD. But would the 270 include flyovers by Fish and Wildlife?

Mr. HERTZ. They probably would, yes.

Senator CONRAD. Do you consider that an accurate, I mean when you check those things out, do you often find that a flyover is not a

very effective way of determining if somebody has made a violation?

Mr. HERTZ. Yes. It gets very confusing. We will have, let's say you have a section of land and there are maybe three, even four, maybe five farmers or producers who farm a part of that piece of land. That would suggest if you spot one suspected drainage on that section, that you are identifying five farmers, and the distortion is extreme.

Senator FOWLER. Again, on the 100, again, just to get the record straight, of the 110 farmers, in answer of my question Mr. Hertz, did they lose all program benefits?

Mr. HERTZ. As of this time they have, yes.

Senator FOWLER. Those are all, many of those are under appeal?

Mr. HERTZ. I would suspect some of them probably are coming back through the appeal process.

Senator CONRAD. Mr. Chairman, if I might just go back to, I do not want to interrupt if you are proceeding on a thought.

Senator FOWLER. That would be so rare. [Laughter.]

Please proceed.

Senator CONRAD. Well I just have to go back to this duck number question. Our witness, Mr. Lambertson said that 1987 was unusual. I have got these numbers. The source says U.S. Fish and Wildlife Service, Waterfowl Breeding Population Service, Population Survey 1987. 1987 total ducks 2,998,000; 1986, 3,138,000; 1985, 2,458,000. If you total these for the 10 years 1977 through 1987 it's 40 percent higher. 40 percent higher than the 10-year period from 1958 to 1967. Now, you know we talk about all of this happening and the ducks are going. I will tell you what is declining is the number of farms. You take that 30-year period. The number of farms in North Dakota have been cut in half. The ducks are doing very well, it is the farmers that are disappearing that is our problem.

Mr. LAMBERTSON. Senator Conrad, having grown up on a farm I completely agree with your statement about farmers. But let it be clearly understood that we just signed the North American Waterfowl Plan with Canada. That was in response to "... lowest record ever of waterfowl in the U.S."

Senator CONRAD. But you know I am focusing now on North Dakota. We are not responsible for the whole country. But we have heard over and over that we are losing habitat. North Dakotans are out there draining and they are killing the ducks off and we have more ducks now than we had 30 years ago. And they are your numbers.

Mr. LAMBERTSON. I am not sure what that is based on, Senator. I would be glad to respond for the record.¹

Senator CONRAD. It is based on U.S. Fish and Wildlife's Service, Waterfowl Breeding Population Survey.

Mr. LAMBERTSON. Senator, the waterfowl numbers have been so low that we have been imposing restrictive seasons. Every year we greatly reduce the number of ducks that can be killed. We shorten the season.

Senator CONRAD. But not, I am talking North Dakota now.

¹ See page 215 for the response.

Mr. LAMBERTSON. Well, North Dakota——

Senator CONRAD. North Dakota is where we are being accused of draining all these wetlands and we have more ducks now than we had 30 years ago.

Mr. LAMBERTSON. North Dakota is the prime area for the production of waterfowl in the United States. Prairie Canada is the leader in production. But as far as the United States' portion of production, North Dakota is the primary producer of waterfowl in this country, and waterfowl populations in the United States are at record lows.

Senator CONRAD. One other point, Mr. Chairman, very quickly. On this question of what draining is going on, I have here from the North Dakota State Water Commission an office memo on permits for draining in the State of North Dakota and I will enter that for the record. In 1986, 610 applications for drainage. In 1987, 91, an 85 percent reduction. Mr. Chairman, I would like to make that a part of the record.

Senator FOWLER. Without objection, so ordered.

[The material follows:]

NORTH DAKOTA STATE WATER COMMISSION

OFFICE MEMO

MEMO TO: David A. Sprynczynatyk, Director, Engineering Division
FROM: Cary Backstrand, Chief, Regulatory Section
SUBJECT: SWC Project #1 - 1986 Regulatory Section Projects
DATE: January 9, 1987

During 1986 the Regulatory Section processed thirty-one (31) dam/dike permit applications. Four (4) were for new dams; four (4) for protection of city property; and the remainder twenty-three (23) for protection of agricultural land, farmsteads and wildlife. Six-hundred and ten (610) applications to drain were processed. Two (2) were of statewide significance, the North Loma Drain and Linden #2, both in Cavalier County. Twenty-one (21) mine or pipeline permits were processed.

Floodplain management provided assistance to one-hundred and forty (140) communities, published six (6) issues of Floodlines and completed two (2) floodplain management studies. Fourteen (14) cost-share agreements were drafted, thirty-five (35) Corps of Engineers 404 permits, and fifty-eight (58) roadway projects were reviewed. State Engineer's hearings were held on the White Spur/Stone Creek Project, Crystal Lake Flood Control Project and Wells #1 Drain Project.

Other projects that the Regulatory Section was involved in were the Lake Alice Study, Red River Dikes, Sargeant County Drain #11, and Rush Lake. Also, seventeen (17) drainage complaints were reviewed.

NORTH DAKOTA STATE WATER COMMISSION
OFFICE MEMO

MEMO TO: David A. Sprynczynatyk, Director, Engineering Division
FROM: Cary Backstrand, Chief, Regulatory Section
SUBJECT: SWC Project #1 - 1987 Regulatory Section Projects
DATE: February 17, 1988

~~Twenty-two (22)~~ the Regulatory Section processed twenty-three (23) dam/dike/other permit applications. Seven (7) applications were for new dams, five of those to create wildlife habitat, one for recreation, and one to establish and maintain an elevation to Rush Lake in Cavalier County. One (1) permit application was for the modification to Dam #8 in Des Lacs National Wildlife Refuge. One (1) permit application was for a sedimentation pond for mining purposes.

Five (5) permit applications were for the construction of dikes. Two were for the protection of city property, and three were for protection of agricultural land and farmsteads. Three (3) temporary dike permits were granted along the Sheyenne River in Cass County. These permits were dependent upon approval of the Horace to West Fargo diversion channel.

Six (6) permit applications were for other devices. Three applications were for diversion channels for mining purposes, one was for the city of Halliday flood control, one was for road ditch diversion, and one was for the straightening of a meandering channel.

~~Ninety-one (91) applications for draft~~ were processed. One was of statewide significance, the Waterloo - South Dresden #1 in Cavalier County.

Twenty-two (22) mine permits and thirty-one (31) waterway crossing permits were processed.

Floodplain management provided ordinance assistance to seventy-nine (79) communities, published six (6) issues of Floodlines. Also, the guidebook for local floodplain administrators was updated and seven (7) floodplain administrator workshops were conducted.

Twenty (20) cost-share agreements were drafted, twenty-five (25) Corps of Engineers 404 permits, and forty-three (43) roadway projects were reviewed.

A State Engineer's hearing was held on the Hammer-Sullivan Drain Project.

The 1987 legislative assembly set up a new law for the protection of wetlands, NDCC Chapter 61-32 "WETLANDS." The law requires that projects permitted through the State Engineer be reviewed and that credits or debits be made to a Wetland Bank if the projects affect wetlands. The Regulatory Section set up a Wetland Bank to record the credits and debits.

CB:mb

Senator FOWLER. Lastly, Mr. Hertz, on the total, to go back to the total Conservation Reserve Program, your testimony said that you anticipate 13 million acres being enrolled in fiscal year 1988. Yet, our understanding is, the February signup will bring in at best 4½ million acres. What is the problem there?

Mr. HERTZ. Senator, I think our Conservation Reserve Program is in direct competition with our regular commodity programs and I believe the farmland that has been enrolled in the Conservation Reserve has been some of the lesser productive around the country in the individual States. We were projecting probably an unrealistic enrollment going into this signup period. We will have another signup period later in the summer and whether that will bring us up to our projected 13 million, I think we would not be that optimistic that it would happen.

Senator FOWLER. Well I do hope, and I am sure you will, evaluate what you can do between now and the July signup to at least come closer to that goal.

Mr. HERTZ. Yes.

Senator FOWLER. What about the language in our funding resolution on rental rates? Was that discouraging? Do you see that as a discouraging factor?

Mr. HERTZ. Mr. Chairman, it certainly has drawn out the acceptance of the contracts having the county committees do an extra review on whether the rental rates established by the Secretary were too high. Yes, I believe it could have an impact on it. Given the fact that 325 counties did not agree with the level established by the Secretary and lowered them, it is conceivable that some rental rates that were offered by producers in that signup could be rejected.

Senator FOWLER. Thank you all for your—

Senator CONRAD. Mr. Chairman, I must make one final point that goes to the question of congressional intent. On July 18, Mr. Peter Meyer, who we have heard referred to earlier here today, testified before the committee. He attended the markup that occurred July 18, 1985. Mr. Meyer told the committee that, "... We feel very strongly in the Department, ASCS and SCS that the small low value wetlands should be exempted." None of the committee members commented or expressed disagreement with allowing those exemptions. On July 19, Mr. Meyer presented to the committee new language specifying exempted wetlands. The first two exemptions were essentially unchanged. However, the third exemption instead of being enumerated separately was stated as if in report language rather than legislation. "... Furthermore, the Secretary may exempt from provisions of this act, actions by producers whose impact cumulatively and individually on the hydrological and biological values of wetlands are diminutive. Mr. Meyer reported that the environmental and wildlife groups were in agreement with this language."

There is a great deal more, but this is from Mr. Peter Meyer, direct quotes. I think the intent of Congress is abundantly clear to anyone who chooses to go back and go through the record. And with that, Mr. Chairman, I yield back my time.

Senator FOWLER. I want to thank all of the administrations witnesses, especially, for being here. We, I think, all have additional

questions, but in the interest of time I do not want to cut off my friends from Missouri. We have kept them for about an hour and a half. If we could, we might submit to you some additional written questions for the record.

Mr. HERTZ. We will be happy to respond.

Senator FOWLER. We thank you very much.

Mr. HERTZ. Thank you, Senator.

Senator FOWLER. The Senator from Missouri.

**STATEMENT OF HON. CHRISTOPHER S. "KIT" BOND, A U.S.
SENATOR FROM MISSOURI**

Senator BOND. Mr. Chairman, I have a statement, a written statement I would like to submit for the record. I wondered if we—

Senator FOWLER. We would be delighted.

Senator BOND [continuing]. I have a number of questions that I will submit in writing. A couple of them, I wonder if we could have perhaps a very brief answer on, they are two or three, I think. First, I would like Mr. Hertz's comments on whether we can pull 12 million acres into the CRP Program without expanding the scope or providing additional enrollment incentives and whether you think we should expand the scope of the CRP to include environmental criteria.

Mr. HERTZ. Let me respond to the last part of your question first in responding to environmental criteria. We did add to the eligibility list filter strip land in this last signup that did not have to meet any erosion requirements as long as it was next to a stream or estuary or other permanent bodies of water. We have worked with Soil Conservation Service in looking at various watershed areas, and delineating a specific bid pool for a given area that would keep pollutants from getting down into the water; let's say we took an area in one of the States surrounding the Chesapeake Bay, identified the beginning of the runoff in an area. Tried to work out some kind of special program that maybe would identify with the water that would run on down and ultimately get into the bay.

We are looking at things like that and I suspect that as I mentioned earlier, I think the land that we have put under contract at this point has been the lesser productive land, on average, across the whole United States. The land that is still in some cases highly erodible, some of our most highly erodible, is also some of our most productive. And I believe that the farmer looks at the amount of income that he can get from a Conservation Reserve contract, compares that to his normal commodity programs and he comes up terribly short with the CRP. As we go down the road maybe that is something we will have to address to attack those other acres.

Senator BOND. Finally, I would just like to tell Mr. Scaling that we are concerned about the approval of the conservation plan. I gather from your written testimony you are still 300,000 short of the goal of 520,000 by the end of year 1988. There has been a lot of concern about the inability of many farmers in Missouri to get the necessary technical assistance. Is there, do you see there a problem with insufficient technical assistance? What can we do about it?

Mr. SCALING. Well, as of right now I think we are moving about as fast as we can. You don't have the same workload throughout the Nation. I am still convinced that we can complete this task by 1990, sir.

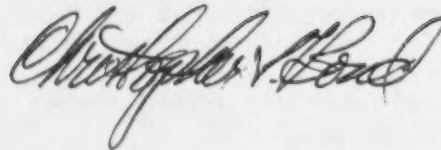
Senator BOND. Well, we are concerned about it. Thank you, Mr. Chairman.

Senator FOWLER. Thank you.

Senator BOND. I will submit the rest of the questions in writing later on. I appreciate that.

Senator FOWLER. Thank you sir.

[The prepared statement of Senator Bond follows:]



STATEMENT BY SENATOR CHRISTOPHER S. BOND (R-MO.)

Mr. Chairman, I commend you for scheduling this morning's hearing on an issue which is fast becoming one of national importance--conservation programs and policies. Few issues generated the magnitude of concern, or the lack of understanding, throughout my first year as a United States Senator. Across the nation, farmers continue to undertake efforts to comply with provisions under the conservation title of the Food Security Act of 1985.

The Deputy Secretary of Agriculture, Peter Myers, has been quoted as saying that the 1985 farm bill has "woven...conservation efforts into the very fabric of our farm policy." While in agreement with this statement, I believe these efforts must promulgate programs which are both **consistent** and **flexible**. Any new regulations must take into account the past conservation efforts of long-time farmers. While these people are not opposed to the increased emphasis on conservation, they would like to see some flexibility in the program.

We are all aware of the scope of the programs implemented in the 1985 farm bill. Our vocabularies now include terms such as the conservation reserve program (CRP), sodbuster, swampbuster and conservation compliance. The Soil Conservation Service estimates that 800,000 conservation plans will need to be developed and approved as a result of conservation compliance. Missouri alone has more than 5 million acres which require conservation plans. The CRP has surpassed the halfway point in reaching the 45 million acre goal. No matter who you talk with, the point is the same--we will be very busy with the conservation title over the next two years.

Mr. Chairman, I recently introduced legislation which would bolster existing conservation efforts by requiring the Secretary of Agriculture to permit producers to enroll in multiyear set-aside programs. This acreage would be planted with a vegetative cover to provide wildlife benefits and improved soil fertility and water quality. Federal cost share and base protection provisions were included to induce farmer participation. This legislation is something I hope the Agriculture Committee will consider in the near future.

Once again, I commend you for holding this morning's hearing and I look forward to hearing from our distinguished witnesses.

Senator FOWLER. Thank you members of this panel, very much.

Senator CONRAD. Mr. Scaling, just before you get away, is it accurate that only 4 percent of the wetlands have been mapped nationally? Is that correct.

Mr. SCALING. No, that is not.

Senator CONRAD. What is the correct—

Mr. SCALING. Let me let Mr. Bridge answer that. He is the one that handles all that and he is much more familiar with it than I am.

Senator CONRAD. I just think we ought to have on the record what—how much has been mapped.

Mr. BRIDGE. Yes; we have made about 49,000 to 50,000 wetland determinations out there. We think that is only about 4 percent of the total wetlands in this country that is going to have to be identified eventually.

Senator CONRAD. So you are saying that only 4 percent of the wetlands have been mapped. The followup question would be, without completion of mapping, how can we determine that a wetland has been improperly drained if there is no official record that the wetland exist?

Mr. BRIDGE. Well, we are basing that on farmer self-certification as he comes into the ASCS office and he fills out those forms. Then we go and check those. Now for those farmers that are not participating in the program at this time, and so on, we are not picking up until later on.

Senator CONRAD. I hope you see the trouble. I mean if we only have 4 percent of the wetlands mapped, how are we going to enforce wetlands provisions when we have no official record of what they are? It seems, Mr. Chairman, I think we have got a very, very big problem on our hands here as we go down the road.

Senator FOWLER. Ladies and gentlemen I am going to, after consultation with Senator Conrad, use a little discretion of the Chair and try to ease everybody's schedules a little bit. This is, as you can see, a very controversial issue in North Dakota. But also, we want to hear from all of the very fine panelists, the overall scope of our conservation programs, including swampbuster and sodbuster. But also, many of the areas which have been successful and are not as controversial. Senator Conrad and I have to go vote now on this cloture petition. I am going to recess until a quarter of 12, the next 20 minutes. Then we are going to take the second panel at 11:45 to approximately 12:30. And then we are going to recess until 2 so that everybody can have some lunch and not sit there, not knowing when you will be on. Then we will take the rest of the panels, hopefully, between 2 and as long as it takes to finish, 2 to 4.

The second panel from 11:45 until 12:30, and then we will have the remaining panels beginning at 2.

[Recess.]

Senator CONRAD [presiding]. The Subcommittee on Conservation and Forestry of the Senate Committee on Agriculture, Nutrition, and Forestry, will come to order. We will resume testimony with Bob Gray from the American Farmland Trust; Maureen Hinkle, the Director of Agricultural Policy from the Audubon Society, and Ken Cook of the Conservation Foundation, Washington, D.C. Welcome all. We will start with Mr. Bob Gray and proceed. Again we

would ask you to summarize your prepared statements, we will provide 5 minutes to each of you, and I want you to know that your full prepared statement will be included in the record. You are welcome to proceed.

**STATEMENT OF ROBERT J. GRAY, POLICY CONSULTANT,
AMERICAN FARMLAND TRUST, WASHINGTON, DC**

Mr. GRAY. Thank you very much, Senator Conrad. I would like to recognize, just before beginning, a young lady to my left, Carol Fesco, who helped put my testimony together and worked with me on this.

Senator CONRAD. She is welcome to join you at the table if you would like.

Mr. GRAY. Thank you very much. I am going to zero in, this morning Senator Conrad, on the Conservation Reserve Program [CRP] and the benefits of the CRP and I would like to pick up on the excellent testimony that Senator Nunn had given earlier and elaborate on that.

He was, I would like to go back just briefly to 1985 when the American Farmland Trust initiated an analysis, an economic analysis, of the potential savings of the Conservation Reserve Program. Subsequently USDA looked at this, OMB, the Congressional Budget Office, and verified a lot of our projections that once you start to take highly erodible cropland out, particularly that land of course that is in the commodity programs, you were going to have some price enhancement for the farmers. You were going to have some base acreage reduction, and you were going to have some savings, some off-setting savings on deficiency payments, storage cost, and commodity CCC operations.

Senator Nunn had updated the figures or had included the figures in his testimony that we prepared in 1987 after the CRP had been in operation for 2 years and at that point we had about 19 million acres.

I come in front of the subcommittee this morning with an additional up date, in which we have just completed, about a week ago, which we have looked at the 23 million acres that is currently in the Reserve. Unfortunately, we did not have enough data on the most recent signup, the other 4 million acres or 4½ million to include that. But we have the most recent update and I will go through these figures very quickly.

In addition, of course, to what is well known, in that we are saving millions of tons of soil, it is projected on the, once we get up to 27 million with the current acreage that we have go in, we will have 550 million tons of soil saved. But we are making substantial economic impact. Not only on the side of helping the farmer, but on the same side of reducing Government costs which we know all Members of Congress and the taxpayers are interested in, given the high deficits that we have at this time. But at this point, with the 23 million acres currently in the Reserve, it has had an impact on base acreage reduction and 15 million acres of base acreage reduction, 7 million of that in wheat, 7 million approximately in feed grains, and of course this translates into reducing production from

that base acreage to about 180 bushels of wheat, 420 million bushels of feed grain, and about 580,000 bales of cotton.

Now when you look at the CRP and project it forward, and that is what we have done, projecting it up to its full potential that Congress set of 45 million acres. As we bring more of this land in we see that the price enhancement for farmers is going to be very significant. We see that as a result of just the CRP operation, by 1990 we will see 27 cents increase per bushel in wheat, and about a 13 cent increase in per bushel in corn as a result of the CRP.

Now the budget savings, looking at that and looking at what has happened in the last couple of years, the budget savings for the CRP in terms of Government outlays are substantial. Our most recent estimate show that there will be a \$3.3 billion savings, offsetting savings, in the next 4 years, or from 1986 to 1990, as a result of the CRP. And basically, how that breaks down is that \$7.4 billion of that will be in savings of deficiency payments as we take that land out of production. About \$2.8 billion in commodity loans and inventory operations and about \$1 billion in storage and diversion payments for a total of about \$11.2 billion in savings. Then when you add the cost on for the CRP, the rental cost of about \$6.2 billion projected out over those 5 years, and \$1.7 billion for cover cost establishing the cover, you get a net savings of \$3.3 billion. So this program not only is saving soil, substantial savings in soil, it is having a very positive impact, of course, on Government outlays.

Now, about a year ago when we did the earlier update that Senator Nunn had included in his testimony we had sort of an unusual situation. That was at that time the market prices were actually below the loan rates. Now market prices have improved. They are above the loan rates. So every time we get additional price enhancement as a result of the CRP, we get less deficiency payments that have to be paid, and therefore, we get more savings. But in addition to the savings for Government outlays, we also see a very good assistance with farm income and we project on the basis of our figures, and we had, Economic Perspectives, Incorporated did this for us. They did the estimates in 1985. They did the estimates last year and they did these new estimates. We show a \$700 million increase in farm income, as a result of the CRP. Not only from the result of the rental payments, but also the assistance in helping to enhance prices.

So it has been a very, very good program and Senator Nunn, as you know, and other Members of Congress have legislation to increase the size of the Reserve to either 60 or 65 million acres. We projected that out and we still show a savings, a Government savings in outlays, as a result of expanding the reserve beyond the 45 million acres. But at least it looks at this point the maximum potential will be reached in terms of Government outlays and terms of farm income as we move from the 23 million acres we have enrolled now to the 45 million acres.

Now I realize that I have quickly used up my time. I would just like to make a couple more points and then I will be finished.

I think that there are about three things that we have to be concerned about with the CRP. One is that after the 11th year, after these contracts start to run out, the question is how much of this land may be coming back in. Some of it will be covered under com-

pliance. But one of the issues that has been discussed by a lot of people is to perhaps allow an economic use of that land after the seventh year of the contract. Norm Berg, former Chief of the Soil Conservation Service and now the Washington representative of the Soil and Water Conservation Society and adviser to the American Farmland Trust has recommended this. And it is something I think the committee should look at, and should look at in the 1990 farm bill so that we can encourage farmers to keep this land either in grass or trees.

The other point is that, actually there are six quick points, is that in addition to all the things I have discussed, including major reductions in soil erosion by the CRP, reduced Government budget outlays, improved farm income, the CRP has also helped to slow decline in farmland prices in the Corn Belt particularly. This was very, very helpful because, as well in the Great Plains in the Corn Belt, we saw a very drastic drop in farmland prices and CRP contracts have helped to stabilize that. They have also, of course, have helped to improve wildlife habitats for this land going in, and they have started to help farmers diversify. Particularly those farmers that have planted trees.

The final thing that I would like to say is that we feel very strongly that the compliance provisions, the sodbuster and the swampbuster provisions need to be very carefully looked at from the standpoint of not tampering with them to the point where we are going to have more land come into production. Because, the CRP's effectiveness is really built on fact that we are lowering the bases. We are pulling some of this land out. We are helping reduce our surplus stock and at the same time we are enhancing prices and helping farm income. So we very strongly feel that changing, or making substantial changes in any of these other provisions at this time is not really warranted. I appreciate the opportunity to testify and I will be glad to answer any questions.

[The prepared statement and responses to questions of Mr. Gray follow:]



American Farmland Trust 1920 N Street, NW Suite 400 Washington DC 20036 (202) 659-5170

TESTIMONY BEFORE THE
SUBCOMMITTEE ON CONSERVATION AND FORESTRY

OF THE COMMITTEE ON AGRICULTURE,
NUTRITION AND FORESTRY

U.S. SENATE

March 24, 1988

Robert J. Gray
Policy Consultant

American Farmland Trust

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to testify today. I am Robert J. Gray, Policy Consultant for the American Farmland Trust (AFT). The American Farmland Trust is a private nonprofit organization dedicated to seeking solutions to conserving our soil, protecting our nation's agricultural land base and promoting farming opportunities.

The support of foundations, corporations and nearly 40,000 members nationwide has enabled the staff at American Farmland Trust to pursue a three-part program that emphasizes:

- 1) providing public information and educational reports concerned with the extent and consequences of the loss of agricultural land to soil erosion and conversion;
- 2) the demonstration of open-market conservancy techniques for the protection of individual farms and ranches that are threatened by conversion or loss of soil due to erosion; and
- 3) providing technical and advisory support to private organizations and governments in the development of policies and programs for the retention of prime agricultural lands.

My testimony today will be focusing on the Conservation Reserve Program (CRP) and its progress to date. I will specifically be concentrating on the tremendous soil savings as

a result of the CRP, the link between conservation programs and commodity programs, and the economic impacts of the Conservation Reserve Program.

I. SOIL SAVINGS

AFT has been involved in soil conservation issues since its incorporation in 1980. In 1982 the American Farmland Trust began a study of soil erosion which led to the 1984 publication of a report entitled Soil Conservation in America: What Do We Have to Lose. This report documented the heavy geographical concentration of soil erosion: that roughly half the total tonnage of cropland sheet and rill erosion was concentrated on 25 million acres, just 6 percent of total cropland.

At the same time, AFT conducted a farmer survey to determine farmers' opinions on the current conservation programs. Seven hundred farmers were interviewed in six sites around the country. A number of technical papers were produced following the survey including an analysis of the growing problems of soil erosion in the U.S. and a policy analysis that recommended that soil erosion efforts be linked with the farm commodity programs. (This will be discussed in more detail at a later point.) Through these projects, AFT realized the necessity of a special program that would take this highly erodible cropland out of production.

About the same time, a number of conservation groups began to discuss the erosion issue collectively. These organizations represented a broad spectrum of interests: forestry, wildlife, agriculture and many other issues. This group, referred to as the Conservation Coalition, worked together on the 1985 Farm Bill. This Coalition was instrumental in attracting a broader base of support behind the Conservation Provisions of the 1985 Farm Bill. Of course, I cannot speak on behalf of these groups. However, I can tell you that we have succeeded in building a solid consensus on most aspects of the Conservation Reserve. These groups include:

- The National Audubon Society
- The National Association of Conservation Districts
- The National Wildlife Federation
- The Soil and Water Conservation Society
- The Sierra Club
- Natural Resources Defense Council
- Wildlife Management Institute
- American Forestry Association
- Environmental Policy Institute
- National Association of State Foresters,

and many other groups across the country who collectively represent millions of people concerned with soil conservation problems. The Conservation Coalition continues to monitor the implementation of the conservation provisions of the 1985 Farm Bill, and also to prepare for the 1990 Farm Bill.

AFT has also continued to follow up on the implementation of the Farm Bill with studies conducted since the beginning of the CRP. The first analysis was a farmer survey. Twelve hundred individual farmers were interviewed to determine their knowledge about the conservation provisions of the Farm Bill. Fifty-nine counties in 23 states were identified as having the highest acreage of highly erodible soils that qualify for the CRP.

Surprisingly, we found that a fairly low percentage of the farmers were actually aware of erosion problems. There were also concerns expressed that acceptable CRP bid rates should be higher. The U.S. Department of Agriculture has since done a very good job of making farmers more aware of these provisions.

The second study was an economic analysis of the Conservation Reserve Program after the first four signups. AFT has contracted with Economic Perspectives, Inc. (EPI), of McLean, Virginia, to conduct this analysis. In addition, EPI recently finished an additional analysis of the CRP after the first five signups. This will be discussed in detail later in my testimony.

I think it is important to realize the incredible success of the CRP in erosion reduction thus far. Twenty-three million acres have entered the CRP in the first five signups. Bids were submitted for 4.5 million acres in the sixth signup, but the results have not yet been announced. Ap-

proximately 470 million tons of soil are being saved annually on acreage already signed up in the CRP. The yearly erosion rate of land currently in the CRP will be reduced from an average of 22 tons per acre to 1.7 tons per acre.

II. LINKING THE CONSERVATION AND COMMODITY PROGRAMS

Perhaps the most important single accomplishment of the 1985 Farm Bill was that for the very first time conservation and commodity programs were linked together. This linkage is something that conservationists had been trying to bring about for a long time.

In the past, major decisions on commodity programs have been made with little thought to the impact on soil conservation. The most extreme example of this lack of policy and program linkage occurred in 1983 when the PIK program was instituted and 78 million acres were set aside at a cost of \$13.2 billion. Most of this acreage had little vegetative cover applied to it, resulting in very little soil savings in comparison to the huge cost of the program.

The PIK program, more than any other event, demonstrated the need to consider how the conservation and commodity programs could be effectively merged in order to achieve both sound economic and environmental policy.

Although the 1985 Farm Bill brought about the very first elements of commodity and conservation program linkage through the establishment of the CRP and the incentives and

disincentives authorized through conservation compliance, sodbuster and swampbuster, there is still a great deal more that needs to be done. For example, in 1987 the annual acreage reduction program set aside more than 54 million acres of cropland as part of USDA's efforts to cut production of feed grains, wheat, cotton and rice. In addition to being costly and having limited effectiveness in reducing crop production levels, these annual set-asides provide no major soil conservation savings, wildlife habitat improvements or water quality benefits.

Therefore, although substantial progress has been made in weaving commodity and conservation policy together, more thought needs to be given to making other aspects of the commodity programs more responsive to conservation needs and more cost effective.

I would now like to discuss the economic impacts of the CRP.

III. THE CONSERVATION RESERVE PROGRAM: GOOD ECONOMIC POLICY

There are very few government programs that provide strong environmental benefits and at the same time improve farm income and reduce federal expenditures for the commodity programs. The CRP manages to accomplish all of these objectives.

Early in 1985 AFT asked Economic Perspectives Inc. to evaluate the proposed CRP and to determine its fiscal impacts once it was implemented. At that time EPI estimated a substantial savings of government outlays for deficiency payments and storage costs on commodity program cropland accepted into the CRP. This information provided in testimony before this subcommittee in the spring of 1985 was the very first evidence put forth on the potential cost savings of the CRP. EPI's estimates proved to be extremely accurate and this information was one of the key turning points in broadening congressional support for the establishment of this program.

In the spring of 1987 AFT again decided to have EPI estimate the cost savings and farm income benefits of a 45 million acre CRP and an expanded program of 60 million acres. These estimates showed considerable budget savings and improved farm income as the CRP increased in size.

NEW ESTIMATES

Now that the CRP has taken-in 23 million acres during the first five signups with another 4.5 million acres being bid in during the most recent signup in February, it seemed appropriate to update the fiscal impacts of the programs so far, and to project these impacts at a 45 million acre level and with an expanded program of 65 million acres. EPI has

just completed these estimates and I would like to share these with the Subcommittee this morning.

IMPACTS TO DATE

I have previously discussed the substantial soil savings of the CRP so I will confine my comments to the farm program savings and the effect on farm income.

As you know the rental cost for CRP land has averaged \$48 per acre and the cost sharing assistance for establishing permanent cover has averaged \$37 per acre. One of the key features of the CRP was the effect it would have on reducing the base acreage of federal program crops since they have grown significantly in the past several years. To date the CRP has reduced the base acreage of program crops by nearly 15 million acres, with wheat and feed grains being reduced by nearly seven million acres each out of this total.

By reducing the base acreage the CRP has been able to lower substantially, the amount of production eligible for program benefits. This reduction amounts to 180 million bushels for wheat, 420 million for feed grains, and 580,000 bales for cotton.

In addition, the average rental cost per unit of base reduction (base acre reduction multiplied by program yield), has averaged \$2.44 per bushel for wheat, \$1.14 per bushel for corn and 16 cents per pound for cotton. The following table (Table I) summarizes the base reduction average program yield

and rental cost per unit of base reduction for the first five signups.

IMPACTS OF THE CRP ON PRODUCTION AND PRICES: 1986-90

As the CRP is expanded to its targeted goal of 45 million acres, it will have a positive effect on reducing the levels of surplus stocks and at the same time improving crop prices. By 1990, our estimates show an increase of 27 cents per bushel in wheat prices, 13 cents per bushel in corn prices and an increase of 11 cents per pound in cotton prices, all due to the acreage retired under the CRP.

For illustrative purposes the next two tables (Tables II and III) compare the planted and idled acreage for wheat, feed grains and cotton, and the impact on farm prices in 1990/91 for wheat, corn, and cotton with and without the CRP. As you can see in Table II, the CRP has a significant positive impact in base acreage reduction requiring less set-aside under the annual acreage reduction program. In addition, Table III shows greater crop price enhancement for wheat, corn and cotton with the CRP as compared to not having this program in place.

BUDGET SAVINGS

Perhaps the most important change in these up-dated estimates are the federal budget savings. The latest estimates show that federal budget outlays for the commodity programs

TABLE I
CONSERVATION RESERVE PROGRAM SUMMARY BY COMMODITY, FIRST FIVE SIGNUPS

COMMODITY	BASE REDUCTION (1,000 acres)	AVERAGE PROGRAM YIELD (bushels/acre)	RENTAL COST PER UNIT BASE REDUCTION (\$/bushel)
Wheat	6,785	27	2.44
Corn	2,664	91	1.14 *
Sorghum	1,728	42	1.56
Barley	1,759	39	1.67
Oats	790	47	1.79
Cotton	914	307 **	0.16 ***
Other	8	NA	NA
Total	14,648		

* Excludes one time payment of \$2.00 per bushel for corn base entered in the fourth signup.

** Pounds per acre

*** Dollars per pound

Source: USDA

TABLE II
PLANTED AND IDLED AREA FOR WHEAT, FEED GRAINS, AND COTTON

ITEM	1986/87	1987/88	1988/89	1989/90	1990/91
-- million acres --					
<u>Current Policy</u>					
Planted	196.1	172.1	176.0	181.6	188.4
Set-Aside	43.2	54.7	36.8	25.0	18.6
CRP Base Reduction	1.3	10.1	14.9	20.1	25.3
<u>NO CRP</u>					
Planted	197.0	179.0	185.3	197.1	202.9
Set-Aside	43.6	57.7	41.0	29.0	22.1
CRP Base Reduction	0	0	0	0	0

Source: EPI

TABLE III
FARM PRICES IN 1990/91

ITEM	WHEAT	CORN	COTTON
-- dollars/bushel --			
Current Policy	3.60	2.09	(cents/lb) 67.6
No CRP	3.33	1.96	56.4

Source: EPI

would be reduced by \$3.3 billion dollars for period of 1986 to 1990 due to the CRP. The savings estimate is the result of an improved outlook for most commodities. Since last year exports have improved and surplus stocks have been reduced. This has resulted in market prices increasing above the current commodity loan rates which has produced greater crop-price responsiveness to the CRP. With crop prices increasing above the current loan rates, deficiency payments have been reduced.

Last year at this time, market prices were below the loan rates which meant that the deficiency payment rate was at the maximum. Increases in market prices when prices are below the loan rate don't reduce deficiency payments and hence have less impact on government costs than when prices were above the loan rate.

Overall, as the result of lower surplus stocks and improved exports, the savings in deficiency payments for period 1986-90 are \$7.4 billion and CCC net outlays on commodity loans, and inventory operations are reduced by \$2.8 billion, while storage and diversion payments are \$1.0 billion less. These total savings are shown in Table IV and when compared with CRP costs for rental payments and vegetative cover the net budget impact shows a savings of \$3.3 billion.

TABLE IV
BUDGET IMPACT OF THE CONSERVATION RESERVE, 1986-90

COST	CHANGE IN COSTS DUE TO CRP
-- billion dollars --	
<u>Commodity Program Costs</u>	
Deficiency Payments	- 7.4
Diversion Payments	- 0.4
CCC Loan/Inventory Costs	- 2.8
Storage Costs	- 0.6
<u>Conservation Reserve Costs</u>	
Rental Payments	+ 6.2
Cover Costs	+ 1.7
<u>Net Budget Impact</u>	- 3.3

Source: EPI

FARM INCOME

As mentioned earlier the CRP has had the additional positive benefit of increasing farm income during a period when farmers have been extremely hard pressed to cover their production costs.

The latest estimates show that the CRP will increase farm income by \$700 million for the period 1986-90. This increase in net farm income was somewhat offset in the beginning phase of the CRP as the result of the farmers' expenses for cover establishment on CRP land, and base acreage reduction on cropland committed to the program. However, as you can see in Table V, net farm income shows a positive balance as the CRP continues in 1989 and 1990. The table also shows an estimated base reduction of 25.3 million acres as the CRP is expanded to 45 million acres.

IMPACTS OF AN EXPANDED CRP

There has been a great deal of interest in expanding the CRP to 60 or 65 million acres. Senator Nunn has testified this morning on his bill which would expand the CRP to 60 or 65 million acres. Our projections show additional savings of about \$380 million if the CRP were expanded to 65 million acres. These estimated additional savings are relatively small because commodity program savings would be limited by a substantial improvement in crop prices and reductions in budget outlays that are already expected to occur as the CRP

TABLE V
ANNUAL IMPACT OF CONSERVATION RESERVE PROGRAM

ITEM	1986/87	1987/88	1988/89	1989/90	1990/91	1986-90
-- million acres --						
CRP						
Total Acreage	2.0	15.8	25.0	35.0	45.0	
Base Reduction	1.3	10.1	14.9	20.1	25.3	
-- billion dollars --						
Net Government Costs	- 0.02	+ 0.02	- 0.72	- 1.19	- 1.40	- 3.31
Net Farm Income	- 0.09	- 0.23	- 0.09	+ 0.40	+ 0.70	+ 0.69

Source: EPI

moves to the 45 million acre level. These estimates assume the same average rental costs per acre as projected under the present program. However, rental costs might increase appreciably once the CRP expanded beyond 45 million acres. Nevertheless a larger CRP would produce important budget cost savings.

SUMMARY

In summary the CRP has become a multifaceted land management tool. It has accounted for (1) major reductions in soil erosion, (2) reduced government budget outlays, (3) improved farm income, (4) slow decline in farmland prices in the cornbelt, (5) improved wildlife habitats, and (6) started the process of diversifying the economy of rural communities through the planting of trees.

At this point it is one of the most successful programs ever passed by Congress. However, this Subcommittee should start to examine the long range implications of this program. Specifically the question remains -- what will happen to CRP land once the contracts expire after ten years? Although most of this land will be covered under the provisions of conservation compliance, AFT believes that Congress should give serious thought to providing farmers with an economic use of CRP land in the latter three to four years of the contract. By allowing haying and grazing on CRP land farmers could work this highly erodible land into their current crop-

ping system. Hay production and livestock grazing could also help farmers and ranchers diversify their operations. Most importantly the allowance of an economic use would help to ensure that this land would remain in permanent vegetative cover.

Lastly, I would like to emphasize the importance of the other major conservation provisions on the 1985 Farm Bill including Sodbuster, Swampbuster and Compliance. The CRP would not be nearly as effective without these other provisions being in place. Therefore, I would strongly urge the members of the subcommittee to resist any attempts to weaken these other provisions. They are vital to the continued successful implementation of the 1985 Farm Bill Conservation Title.

Thank you, I appreciated the opportunity to testify and will be glad to answer any questions.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON
 AGRICULTURE, NUTRITION, AND FORESTRY
 WASHINGTON, DC 20510-8000

April 7, 1988

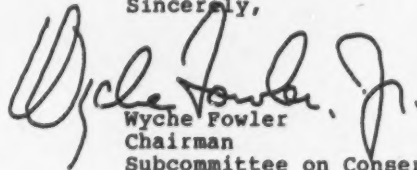
Mr. Bob Gray
 Policy Consultant
 American Farmland Trust
 1920 N Street, N.W.
 Suite 400
 Washington, D.C. 20036

Dear Mr. Gray:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
 Chairman
 Subcommittee on Conservation and
 Forestry

Additional Questions for MR. BOB GRAY, AMERICAN
FARMLAND TRUST, submitted by Senator Conrad

1. You were involved in the development of the conservation title of the 1985 Food Security Act. You testified in support of the swampbuster provisions, essentially advocating an extension of sodbuster provisions to include wetlands. Was it your intention at that time simply to discourage the future conversion of uncultivated wetlands into cropland?
2. In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.
3. What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?
4. In your opinion, are local USDA officials reluctant to impose a severe penalty--loss of all federal farm program benefits--if they felt that a swampbuster or sodbuster violation was minor or unintended?
5. Would you be supportive of making certain wetlands eligible for the Conservation Reserve Program?



American Farmland Trust 1920 N Street, NW Suite 400 Washington DC 20036 (202) 659-5170

April 29, 1988

The Honorable Wyche Fowler
Chairman
Subcommittee on Conservation
and Forestry
United States Senate
Committee on Agriculture Nutrition
and Forestry
Washington, D.C. 20510-6000

Dear Senator Fowler:

In response to your letter of April 7, 1988, the American Farmland Trust (AFT) is happy to submit the following responses to Senator Conrad's questions regarding the "Swampbuster" provisions of the 1985 Food Security Act. The American Farmland Trust is pleased to have the opportunity to supplement the record of the March 24, 1988 hearing.

QUESTION 1: You were involved in the development of the conservation title of the 1985 Food Security Act. You testified in support of the swampbuster provisions, essentially advocating an extension of sodbuster provisions to simply discourage the future conversion of uncultivated wetlands into cropland?

ANSWER: In supporting the provisions of the swampbuster legislation, it was the American Farmland Trust's belief that the purpose of the law was to stop the conversion of wetlands by eliminating access to federal funds to those individuals who convert wetlands. The term "wetlands" refers to land that has been drained, dredged, filled, leveled or otherwise manipulated to produce agricultural commodities in situations in which production would not have been possible without such action.

In regard to "uncultivated wetlands," Congress intended to cover both uncultivated and cultivated wetlands in the final rule. Cultivated wetlands are covered specifically under the swampbuster provisions in section 12.32(a)(3) of the final rule.

QUESTION 2: In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.

ANSWER: The American Farmland Trust feels that there is not enough information available at this time to answer this question. Without proper documentation it is difficult to measure the impact swampbuster has had on wetlands. We suggest that an analysis be directed by Congress that would accurately determine whether the swampbuster provisions have adequately protected wetlands.

QUESTION 3: What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?

ANSWER: According to the Agricultural Stabilization and Conservation Service, five swampbuster violations have been determined since the implementation of the swampbuster rule. Two hundred and ninety five swampbuster violation cases are being reviewed nationwide. In the opinion of the American Farmland Trust, this is a very small number of violations or potential violations of swampbuster. It would appear that there is not uniform enforcement of the law nationwide, but without proper documentation this cannot be determined with certainty.

QUESTION 4: In your opinion, are local USDA officials reluctant to impose a sever penalty -- loss of all federal farm program benefits -- if they felt that a swampbuster or sodbuster violation was minor or unintended?

ANSWER: The record so far shows that there have been very few actual cases where benefits have been lost. In fact, according to the Agricultural Stabilization and Conservation Service, only 110 farmers, to date, have lost farm program benefits due to sodbuster or swampbuster violations.

There are certain provisions within the final rule which would enable local USDA officials to make exceptions for allowable conversions. These would include the "small areas" exemption (7 CFR Part 12.22 (C)) for sodbuster. Swampbuster exceptions would include: "actively pursued" conversion (7 CFR Part 12.5(d)(5)(ii)); delayed conversion "due to circumstances beyond the person's control," or conversion that was

started by a farmer who would suffer "unnecessary economic hardship" if not allowed to complete the conversion (7 CFR Part 12.5(d)(5) (iv)). These provisions need to be fully utilized and a better track record needs to be established before any further changes are warranted.

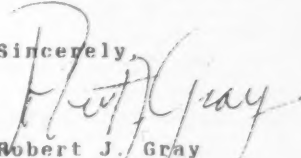
QUESTION 5: Would you be supportive of making certain wetlands eligible for the Conservation Reserve Program.

ANSWER: Although AFT believes that wetlands are important lands to protect over the long term, we feel that at this time there are enough programs in place to provide opportunities for wetlands to be restored and protected. There are several provisions currently in the CRP that make wetlands eligible for these program benefits.

Once the CRP reaches its goal of 45 million acres AFT feels that provisions to include more wetlands under this program could be added.

I hope you find these answers helpful. If you have any additional questions or would like anything clarified please contact me.

Sincerely,


Robert J. Gray
Policy Consultant

Senator CONRAD. May I just follow up quickly on the last point that you made because I think it is an important one. I don't think anybody is proposing any wholesale revisions in swampbuster and I think that is critical to understand. But, there does seem to be, clearly, reasonable complaints that ought to be addressed. If you do not deal with reasonable complaints then you build up a tremendous backlash. I would be interested in your observation on what was the intent. We have, as I have said repeatedly, gone over the legislative history in great detail, congressional intent. We have statements of many of the people, including environmental groups that testified at the time of swampbuster, including people who are here today. I am going to be interested to talk to them about that. Let me just talk to you about something that you said. The purpose of swampbuster is really to discourage any future converting of wetlands to cropland. Is not that really the essence of it?

Mr. GRAY. Yes. I was around in 1985, of course working for AFT, doing a lot of work on lobbying and on the conservation provisions in the bill. I heard all of the discussion on both the Senate and House side and on the Senate and House floor. My feeling, listening to all of that discussion, Senator Conrad, was that where you have a depression in the field that a farmer has been operating on for years, but it is delayed sometimes a week or two because that stays wet a little longer. I grew up on a dairy farm in New York State. We did not have prairie potholes there. We did not have any prairie, but we had some wet holes, I can tell you I buried a lot of tractors in them. But, we always had to work around the wet holes and I was always inclined to try to get in a little closer with the disk when I was trying to get that field ready to put corn in and usually end up by having to go get my father pull me out. But, my feeling on it was that if the field, if that depression was wet and there was a delay, then that is OK. In other words the farmer can continue to operate. But when you go in the question seems then, when you go in to artificially drain that wet spot with tile or with ditching or with some other conservation measure, that is where you really then begin to broach, or to get into the question of the swampbuster and whether or not you are making now a substantial change to that particular wet area. I would agree with Milt Hertz on the way that ASCS and SCS has interpreted that based upon what I heard in 1985.

Senator CONRAD. Let me go back to that because I really think that misses the point. I really do. We are not talking here about bringing any new land into production. Absolutely not. We want to lay that reservation to rest right now. We are not talking about that. But when you said in 1987 the purpose is really to discourage any future converting of wetlands, what other interpretation could be laid on that other than if somebody had been farming that for years, and if it was a wet spot and they drained it before they could drain it again. That is something that—what we are trying to do is preclude new activity in the future that would drain land that had not previously been drained.

Mr. GRAY. I think there is three distinctions there, Senator Conrad. And I listened very carefully to the discussion this morning. One is, the first one is, if it has been wet and it has always

been a week or 10 days late, he can continue to do that, there is going to be no problem. I think you agree with what Milt Hertz said about that in terms of whether a farmer would fall under swampbuster because of his continuing to operate. The second, and this came up in—

Senator CONRAD. Wait a minute, wait a minute. If that farmer, let us be clear on this.

Mr. GRAY. OK.

Senator CONRAD. Because I want the record to be abundantly clear on what my position is. If a farmer has, in the past, drained that wet spot and farmed it, I think, clearly, under legislative intent, it was intended he be able to do that in the future. That what was intended was that we would preclude, for the future, draining of additional wetlands.

Mr. GRAY. That is the second point I was going to make. That point came up over on the House side, I think last year. And the question was, let us say that farmer 3 or 4 years ago put a tile drain in there and he had drained that wet spot, then the tile broke. And the question was whether or not he would fall under swampbuster if he went in to fix that tile. I do not think under the procedures and I do not think under the local committees that they are going to cause a farmer to lose his benefits if he went in there to fix a tile. But if he went in there, if no tile had been put in or no artificial drainage had been implemented in that particular wet spot and then he went back in to do that, then I think that is where swampbuster kicks in.

But if there had been no tile in there and they are going in and draining that then that does fall under swampbuster.

Senator CONRAD. Now that sounds like a reasonable position. Let me just go back over the point because I want make sure it is very clear. If a farmer has a wet spot that he has farmed repeatedly, drained it repeatedly, no problem. That falls under the exemption or the intended exemption. If he has left it in the past, in other words, farmed around it and come back to it, that is what he ought to do in the future as well. In other words, there has got to be some reasonableness entered into this and if a farmer has, in the past, drained a wet spot to make it part of his ongoing operation, he ought to be able to continue to do that. The whole notion of swampbuster was that we were not going to convert in the future, wetlands. And you would agree with that proposition?

Mr. GRAY. Well, I don't know how my two colleagues, what their position will be and I certainly do not want to speak for the other conservation groups. But I guess my point is if he had just put some tile in there a few years ago and then the tile, and he has been farming that area, and the tile broke, he has got to be able to fix it. But if he has tiled it or drained it and then it has not been a part of his operation for a number of years and then he suddenly goes back in. Or he has been operating that as a wet spot and then goes in to artificially drain it, in both of those cases swampbuster applies.

Senator CONRAD. Now let us go back to the point of where he has historically drained it, would not he be allowed to continue to do that under swampbuster. Because swampbuster, according to your own language, is to discourage any future converting of wetlands to croplands.

buster, according to your own language, is to discourage any future converting of wetlands to croplands.

Mr. GRAY. Well, what I meant by that, future, was to go into a parcel and artificially drain it. That was what I would consider future drainage.

Senator CONRAD. All right. Maybe we can, we will go to Ms. Hinkle, maybe we are going to come back to this point because I think where you have got a history of previous cultivation that clearly, it was not intended swampbuster apply to that, where there is previous cultivation. That is, as we go back and read the congressional history, we think that it is quite clear. We are trying to prevent future draining of wetlands and I think that is in line with what I hear you saying. If we go to—

Mr. GRAY. I would just like to correct that, Senator. I think where we are, in terms of our semantics, is what I consider future and I will just point that out one more time. If it has not been drained. If it is a wet hole, and you have been operating it and farming through it and you have had to delay on your cultivation practices. If you go in, what I would conceive as a future drainage is if you go into that wet spot now and start to artificially drain it. That is a new, you are doing something different than you were doing before. That is where we sort of part company on that in terms of semantics and the way I understand it.

Senator CONRAD. All right.

Mr. GRAY. I just want to make sure that is clear on the record.

Senator CONRAD. OK. Maureen Hinkle the Director of Agricultural Policy, the Audubon Society, welcome.

STATEMENT OF MAUREEN K. HINKLE, DIRECTOR, AGRICULTURAL POLICY, NATIONAL AUDUBON SOCIETY, WASHINGTON, DC

Ms. HINKLE. Thank you, Senator Conrad. The National Audubon Society appreciates this opportunity to testify at this important oversight hearing. I would like to have inserted in the record our testimony on the legislative history of swampbuster, prepared for the January 26, 1988, hearing before the Subcommittee on Agriculture, Rural Development and Related Agencies of the Senate Committee on Appropriations. Also I would like to have submitted in the record, if it has not already been done so, the recent issue of the "Journal of Soil & Water Conservation," the whole issue of which is devoted to the conservation title, title 12 of the 1985 farm bill, as well as an associated white paper on the 1985 conservation title.¹

This white paper and the Journal of Soil & Water Conservation record and document, in full, the progress of the 1985 farm bill. They include a broad spectrum of opinions and the most recent data compiled by public and private sources. Some of the areas that were identified in need of priority attention in these two documents, as well as in the view of Audubon members, include the following:

A low signup rate in some areas of the country; competition between the CRP and the feed grain programs; the need for incen-

¹ The issue of January-February 1988, volume 43, No. 1, "Journal of Soil & Water Conservation" is retained in the subcommittee file.

tives for meadow hay based rotations and forage; assurance that the investment made in the 10-year Reserve pays off in conservation and production terms at the end of the contract period; doing something about farmers who enter the cropland into the CRP only to break up other lands which are not technically highly erodible or wetland; and placement of sections of fields or shoulders in the CRP rather than the whole field, which would save Federal outlays, and this could include edges of fields, tops of hills and include windbreaks and shelterbelts.

Mr. Chairman, a growing number of proposals seek to add other environmental problems, problem areas to the CRP. We heard from EPA this morning about water quality and ground water. We regard Senator Nunn's bill, S. 1521, as extremely important for generating momentum for expanding the Reserve and for stimulating creative thinking to achieve related environmental goals. A couple of his ideas can be done now before the 1990 farm bill, and that would include incentives for more trees and CCC funding.

We think it is healthy for USDA and for Congress to think of expansion, and how to get there. Without a directed push we may not reach those lands that are in need of corrective and protective management. But halfway to our goal is not the time to change the goals. Farmers are just starting to understand and to gain confidence in the conservation provisions. For USDA the increased bureaucratic load will only get more complicated as conservation plans need to be developed by the target dates. Adding complex dimensions at this point would be demoralizing to the bureaucracy and would jeopardize not only the soil erosion goals, but new objectives as well.

It should be remembered that the CRP was constructed after 5 years of inventory gathering, monitoring, and both public and private analyses of soil erosion across the country. Targeting areas with water quality problems would involve additional and complicated sets of factors. However, we do think that USDA should add water quality to its ongoing NRI gathering.

Senator Boschwitz introduced S. 2145 that would make wetlands eligible for the CRP. Extending CRP eligibility to include natural wetlands would set a bad precedent for the protection of other natural areas, such as rangeland, for instance, and for bottomland hardwoods. Congress might be asked to provide payment to producers who have kept out good range and who are keeping bottomland hardwoods in bottomland hardwoods. We do not pay these farmers not to cut down their hardwoods. Once the Government starts to pay farmers not to convert, a long line could form.

There are several opportunities that already exist in the 1985 farm bill for creation and restoration of wetlands. In our view the most appropriate program, and I will not go into those others, but in our view the most appropriate program to conserve critical wetlands areas is the legislation that was specifically designed for it. And that is the water bank program. It has been ongoing for 16 years and it has always been over demand.

There is the red light and I want to allow time for questions and so I will reserve the rest of my time.

[The prepared statement, material submitted for the record, and responses to questions of Ms. Hinkle follow:]



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STATEMENT

BEFORE THE

SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

SUBCOMMITTEE ON CONSERVATION AND FORESTRY

MARCH 24, 1988

by

Maureen Kuwano Hinkle
Director, Agricultural Policy

Mr. Chairman and members of the subcommittee, the National Audubon Society appreciates the opportunity to testify at this important oversight hearing on the Conservation Title of the Food Security Act of 1985 (Title XII). The enactment of the landmark conservation provisions was a culmination of long and sustained effort on the part of Audubon, from our grassroots through the commitment of resources at the national level. Among our half a million members and our Board of Directors, we have farmers and volunteers trained in both the careful observation and treatment of our environment. At the national level, we have a sustained effort in lobbying, administrative implementation, and grassroots education. We have worked in unison with other conservation organizations, some of which are here today, to convey our common concerns.

This subcommittee is fortunate to have for this hearing, the recent January-February 1988 issue of Journal of Soil and Water Conservation and its auxiliary white paper report from a conference held last November. These two documents record in full the progress of the conservation provisions of the 1985 Act and include the broad spectrum of opinions and most recent data compiled by public and private sources. If not already inserted in the record of this hearing I would like to do so. Our statement will briefly summarize progress, raise a few questions, identify some areas in need of attention, and offer comment on some of the legislative proposals seeking to add an increasing number of environmental quality goals to Title XII.

The widespread interest in the conservation title is evidenced by the 8,400 public comments received by USDA on the regulations. The Conservation Reserve Program (CRP) regulations were promulgated in February 1987, and final rules on sodbuster and swampbuster were published in September 1987. Even in the short time period of this new program, erosion reduction per year amounts to 467 tons, at a saving of \$500,000 per year in CCC program expenditures. Retirement of base acres is responsible for this reduction in expenditures. Reductions in deficiency payments, commodity loan costs and storage costs are added benefits of the CRP. Moreover, program commodity prices have and will continue to increase for farmers.

At the same time the magnitude of the job is overwhelming. As USDA told the Soil and Water Conservation Association conference, "The Department of Agriculture in all of its history has never been asked by Congress or by the public to undertake such a broad, comprehensive, consistent, and coordinated program that involved all of its agencies into one problem-solving enterprise." Of the 421 million acres of cropland in the U.S., 165 million are affected by the highly erodible land provisions. 118 million acres are highly erodible cropland. USDA estimates that 3 percent of the 165 million acres of highly erodible land will be sodbusted between 1985 and 1995. Approximately 99 million acres will need a conservation plan developed before 1990, based on 100 percent participation. Of the 76 million acres of wetlands, 5.2 million have a medium to high potential for conversion to cropland and therefore the highest probability of being affected by swampbuster.

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The enormity of the job and the skepticism among some farmers and farm groups as to whether these programs will, or even should, work has detracted somewhat from the precedential value and concrete benefits of this program -- the reduced federal payments, increased commodity prices, and dramatic reduction in soil erosion. Nevertheless, progress is attainable in proportion to the effort made and the attention paid to mid-court corrections and improvements as implementation proceeds. The direction of conservation programs has been reversed with this new set of incentives and disincentives. We did not, however, expect the road to be smooth or easy.

In the eyes of Audubon members, the areas in need of priority attention, which were also identified at the SWCA conference, include the following:

- Low signup rate in some areas and states such as Maryland, Delaware, Virginia, Connecticut, Massachusetts. How should the CRP bids be amended to attract bids from low signup areas?
- Competition between CRP and feed grain programs? How can the USDA reduce such competition?
- Encouragement of meadow/hay-based rotations and forage. What encouragement and incentives can we provide?
- Ensuring that the investment made in the 10-year reserve pay off in conservation and production terms. One approach would be to prohibit restoration of the farm program crop base on any CRP land after the contract expires.
- Some farmers enter cropland into the CRP only to break up other lands which are not technically highly erodible or wetland.
- Placement of the most highly erodible sections of fields ("shoulders") in the CRP rather than the whole would save outlays. This could apply to edges of fields, tops of hilly areas, and could include multiple windbreaks and shelterbelts.

Another concern to Audubon members is the Secretary's discretionary authority over multiple-year set-asides. Rather than expensive one-year set asides which have negative effects on wildlife, soils and the federal budget, the Secretary should be mandated to require farmers to set aside the same land for between 2 and 4 years. Incentives should favor 4 years rather than 2 years. Perhaps the producer would be required to establish a legume cover the first year, and in the fourth, he would be allowed to harvest the hay, plow the alfalfa down, and establish a cover crop for winter. At the end of the 4 years, the producer would then be required to rotate the set-aside acres to a new field.

Mr. Chairman, a growing number of proposals seek to add other environmental problem areas to the CRP. There is a provision in the Act to

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address surface water quality at the same time as erosion problems. This consideration was specifically emphasized in the 6th bidding round held between February 1-19, 1988.

We regard Senator Nunn's bill, S. 1521, as very important for generating momentum for expanding the reserve and stimulating creative thinking to achieve related environmental goals. We are grateful to Senator Nunn for expanding the reserve goal in the 1985 legislation from 30 million to 45 million acres. It would be healthy for Congress and USDA to think of expansion and how to get there. Without a directed push at this point we may not reach lands in need of corrective and protective management.

But half-way to our goal is not the time to change the program. Farmers are just starting to understand and gain confidence in the conservation provisions. For USDA, the increased bureaucratic load will only get more complicated as conservation plans need to be developed by the target dates. Adding complex dimensions at this point would jeopardize not only soil erosion goals, but the new objectives as well. As admirable as it is to add ground water and wetlands to the CRP, it should be remembered that the CRP was constructed after five years of inventory gathering, monitoring, and both public and private analysis of soil erosion across the nation. Targetting areas with water quality problems would involve far more complicated sets of factors. However, USDA can and should add water quality data into the ongoing National Resources Inventory. The legislative proposals now focusing on land retirement schemes for areas experiencing ground water contamination are extremely useful in guiding Congress to mandate studies, explore policy options, adopt initiatives and start pilot projects to ensure that water quality is included in the next farm bill. We urge that this multi-disciplinary, multi-agency effort be developed and started immediately.

S.2143, introduced by Senator Boschwitz, would make wetlands eligible for the CRP. In regard to existing natural wetlands, Audubon believes extending CRP eligibility to include them is unnecessary and would set a bad precedent for the protection of other natural areas such as range and bottomland hardwoods. Congress might be asked to provide payment to producers who have kept good range land out of production that could be brought into crops. Similarly, bottomland hardwoods that haven't been converted to agricultural cropland are best left forested. We do not pay farmers not to cut down hardwoods.

Mr. Chairman, bottomland hardwoods provide environmental benefits, from sediment retention to fish and wildlife habitat. If converted to croplands, communities downstream would have to invest funds in construction and maintenance of flood control structures. Moreover, the farmer could get a bundle of money for valuable trees such as walnut, pin oak, sycamore, cottonwood and silver maple. Since he's providing society a "free" service by keeping the hardwoods, he could ask to be paid off, too. Once the government starts to pay farmers not to convert, a long line could form.

We welcome and will work on incentives to protect our natural wetlands. We are particularly enthusiastic about restoring converted wetlands. Several

opportunities already exist for creation and restoration of wetlands in the 1985 Act.

The CRP offers three opportunities for wetland restoration. (1) All Class VI-VIII lands, including wetlands, are eligible for the CRP. 6,622,000 acres are classified as IW, V, VI, and VIIw lands and are eligible for the CRP. (2) Conservation practice No. 9 is available to farmers for the creation and restoration of shallow water areas, including potholes. After the first 4 bidding rounds, 1,000 acres were accepted at an average of \$550/acre/year. (3) The 6th bidding round provided for bids of 66-99 foot filter strips/buffer zones to be established around water bodies, including wetlands.

In addition, states have created several opportunities to restore wetlands. Minnesota's Reinvest in Minnesota (RIM) program provides piggy-back payments for the restoration of wetlands either in 20-year or permanent easements. Several states offer property tax relief to landowners to keep wetlands intact -- Iowa, Minnesota and New Hampshire. Delaware and New Jersey provide similar tax breaks on conservation easements for wetlands kept in their natural state.

Finally, Section 1318 of the Food Security Act provides for debt restructuring of FmHA loans for farmers who put cropland into 50-year or permanent conservation easements for wildlife, recreation or conservation purposes. This includes wetlands. Although FmHA has been less than enthusiastic about this provision and has not even promulgated regulations let alone tried to implement the law, FmHA could be mandated to provide for wetland easements. Congress could also add a permanent easement option to the CRP program, and the federal government could purchase easements to permanently remove wetlands from cropping.

In our view the most appropriate program to conserve critical wetland areas is the legislation specifically designed for it -- the Water Bank Program initiated in 1970. The Water Bank provides contracts for easement on wetlands and adjacent areas for 10-year periods. Bids have ranged from \$7-66 per acre -- far lower than the CRP creation and restoration of water areas. Converted and artificial wetlands are also eligible.

The demand is very large and enrollment is at the maximum. Water Bank funding, however, is below the authorized \$10 million per year at approximately \$8 million. Difficulty with appropriated funds for the Water Bank also holds for the CRP.

The Water Bank has a well established history and a record of demand. It will continue after the CRP reaches its goal. If Congress believes wetlands need to be preserved, appropriated funds should reflect this extraordinary need. At the same time, USDA should be instructed to administratively include Type I and II wetlands in the Water Bank because of their importance as waterfowl nesting habitat.

Monitoring and evaluation are really critical before we expand the reserve and add new environmental goals. Hopefully such evaluation will include other relevant agencies such as the Fish and Wildlife Service and EPA. Evaluation should also involve local communities, state officials, and private groups. Evaluation played an indispensable part in restructuring conservation programs leading to the 1985 Farm Act. Evaluation can help design the next generation of conservation policies and to improve existing programs.

Above all, congressional oversight is extremely important to document progress, identify problem areas, clarify direction, and correct what can be changed. This hearing is laying important groundwork for the next Farm Bill. We look forward to working with you on the next generation of conservation provisions.

Thank you.



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STATEMENT
SUBMITTED TO THE
SENATE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT AND RELATED AGENCIES
FOR INCLUSION IN THE RECORD
OF THE
JANUARY 26, 1988
HEARING ON
IMPLEMENTATION OF THE
SWAMPBUSTER PROVISION OF THE FOOD SECURITY ACT OF 1985

By

Peter Kilian Weber
Agricultural Policy Division
National Audubon Society

The National Audubon Society appreciates this opportunity to submit this written testimony for the record of the hearing on the implementation of the swampbuster provision of the Food Security Act of 1985.

Wetland preservation was selected by our 500,000 members as a high priority issue, and therefore we support programs such as swampbuster which protect wetland habitat, especially when integrated into a comprehensive conservation effort. The inclusion of swampbuster in the conservation title of the 1985 Farm Act combined the growing recognition of the value of wetlands with the need to reduce commodity crop surpluses. The National Audubon Society was involved at the outset in the efforts to create and enact the swampbuster provision of the Food Security Act of 1985, and we believe a fair and comprehensive structure was developed and put into law.

Once signed into law, the rule making process proved to be complex, and at times contradictory messages were issued. We believe that because of these and other problems, some farmers were confused about the intent of Congress and the law. The ensuing frustration is understandable, as it would be with the integration of any new direction imposed on an existing system. However, the adjustment difficulties currently experienced by all parties in the integration of natural resource conservation with commodity programs is not sufficient reason to tinker with a new program only four months after the final regulations were published. Furthermore, to try to alter the conservation title of the 1985 Farm Act when both farmers and the Agriculture Department are adjusting to the new program could reverse the upward trend now occurring throughout the agricultural sector, which is now beginning to raise prices for farmers and lower our grain and other commodity crop surpluses.

For the record of this hearing, we will focus on three issues regarding swampbuster: the intent of Congress, the promulgation of the rules, and administrative implementation. After a careful review of the process to date, we believe that implementation of the complete conservation title of the 1985 Farm Act, including swampbuster, should proceed as established by law and promulgated in regulations, and that the administration of the law should be brought up to speed in all areas so that farmers who conserve their wetlands are not put at a disadvantage relative to farmers who exploit their wetlands.

Legislative History

Some people would like to believe that swampbuster was a last minute add-on, slipped into the 1985 Farm Act. Nothing could be further from the truth. The legislative history for swampbuster is detailed and quite well developed, with deep roots in a growing national concern for wetlands.

The federal government has concerned itself with wetlands as far back as the Swamp Land Acts of 1849, 1850, and 1860. At that early date, however, wetlands were regarded as wasteland which, if altered in some manner or

another, could be made useful to society. This attitude led to the wholesale subsidized destruction of millions of acres of wetland. Because bird watching and duck hunting are deeply integrated into American culture and wetlands are the habitat of migratory birds, sufficient concern developed to attract the attention of Congress, but the passage of the Migratory Bird Conservation Act of 1929 had little effect because few appropriations were made, and federal subsidies continued to encourage wetland conversion.

By 1958, agricultural expansion, fueled by cost-sharing, tax write-offs, and agriculture program benefits, was responsible for the conversion of more and more wetlands -- especially in the prairie pothole region of the country. Recognizing that already established programs could not keep pace with the loss of these waterfowl production wetlands, Congress amended the Migratory Bird Stamp Act of 1934 and passed the Wetlands Loan Act of 1961. Nonetheless, only a small percentage of the potholes could be acquired, and wetland conversion continued, as before, under federal subsidies.

Because the early attempts to protect prairie potholes and other wetlands were largely unsuccessful, new methods were sought. In 1962, Congress amended the Soil Conservation and Domestic Allotment Act and incorporated the idea of not providing federal assistance for wetland drainage in North Dakota, South Dakota, and Minnesota if the Secretary of the Interior determined it harmful to wildlife. Although this provision did not significantly slow wetland conversion, it introduced the concept of no longer subsidizing wetland conversion. By 1975, SCS had adopted the beginnings of a wetland protection policy, and after President Carter issued his 1977 executive order on the protection of wetlands, SCS strengthened its policy, and ASCS ended its cost-sharing for wetland drainage.

Besides the concern for wildlife, greater public awareness of the "public works" values (water purification, flood control, ground water recharge) and beauty of wetlands led to the enactment of Section 404 of the Federal Water Pollution Control Act of 1972 (out of which the wetland definition for swampbuster emerged), and later the Coastal Barrier Resources Act of 1982.

Nonetheless, prairie potholes continued to attract attention and money with the passage of the Water Bank Act of 1970. Congress once again affirmed its dedication to wetland conservation in the Water Bank's authorizing language by stating "the Secretary [of Agriculture] shall have the authority to enter into agreements with landowners and operators in important waterfowl nesting and breeding areas for the conservation of water . . . or other wetlands. . . ."

The value of the prairie pothole wetlands to the state of North Dakota can be seen in the consistent flow of money from the Water Bank: \$3,185,000 in FY87 -- more than any other state.

Nevertheless, it would have been unrealistic to expect taxpayer money to save every wetland, especially when competing with continued federal subsidies

and tax breaks for wetland conversion. Finally, increased recognition that national wetland and agricultural policy were working at cross purposes came to the forefront with the Farm Act of 1985.

The Development of Swampbuster Language

The environmental and fiscal effects of commodity programs and tax policy became a part of the debates preceding the 1985 Farm Act. The federal incentives offered farmers resulted in expensive surpluses, and drew millions of acres of fragile lands into crop production, causing record soil erosion rates, and resulting in the loss of an estimated 400,000 acres of wetland per year. The increased recognition of the value of our wetland and soil resources, combined with the economic impact of surplus production, brought about the integration of resource and commodity programs in the language of the conservation title of the 1985 Farm Act, as well as the Tax Reform Act of 1986.

For this section, please refer to Appendix 1, Swampbuster Legislative History and Public Outreach. This chronology is a summary of events which led to inclusion of swampbuster in the 1985 Farm Act. It clearly demonstrates that out of past precedent and concerns, the development of the swampbuster language involved a wide range of parties, was very well publicized, and was fully considered, along with sodbuster, to assure that concerned parties had ample opportunity for input into the process, and that the final language which the Conference committee crafted, reflected the intent of Congress.

Reviewing the record, it is clear that swampbuster developed most immediately as a natural extension of the sodbuster concept to deny federal subsidies to those who break out fragile land for crop production. To allow wetlands to be converted for commodity production while highly erodible range was declared off limits, or to establish a penalty which was less stringent for one than the other, would have been inconsistent and unfair. Instead, there was unanimity among Senators, Representatives, farmers, conservationists, and others that both provisions were needed to halt the further expansion of agricultural at the expense of our natural resources, particularly in light of the need to reduce production levels through the Conservation Reserve and other set-aside programs.

At the House and Senate hearings on conservation in the 1985 Farm Act, inclusion of a swampbuster provision was brought up early on and discussed at length. In addition to Congressional members speaking in favor of swampbuster, a total of 12 groups requested that the benefits of federal programs be denied to producers who convert wetlands for crop production. Farmer organizations also spoke in favor of swampbuster.

Among swampbuster's most vocal proponents were:

- Senator Kasten

- Senator Zorinsky
- Representative Daschle
- Representative Wolpe on behalf of Representatives Udall, Sieberling, Kilde, Richardson, Moody, Bryant, Kostmayer, Follietta, Horton, Carper, Edgar, Mikulski, Florio, Leach, Boucher, Downey, Leland, Slattery, Levin, Oberstar, and Tauke.
- The Sierra Club
- The National Audubon Society
- The National Wildlife Federation
- The Wildlife Management Institute.

As hearings opened the subject for debate, farm groups were asked to offer their opinions on inclusion of swampbuster. Swampbuster was further publicized and described in editorials, letters from members of Congress, newsletters, speeches, press releases, and many articles, giving potential opponents ample opportunity to hear about swampbuster and to offer their input.

Both houses developed swampbuster language and included it in the bills they reported out of the agriculture committees. The House version was introduced by then Representative Daschle and was extensively discussed in full committee mark-up. In the Senate, both Senator Kasten and Senator Zorinsky introduced swampbuster legislation, and in the Senate Agriculture Committee mark-up of the conservation title, the members discussed and developed their swampbuster language from the two proposals.

The definition of wetland, in particular, received extensive consideration in the Senate mark-up. Besides Senators Kasten and Zorinsky, Senators Boschwitz and Cochran had also included wetland definitions in their bills. Assistant Secretary Pete Myers participated in the development of the compromise definition, which he explained to the committee would include prairie potholes. Senator Zorinsky stated that it should. The House Report

99-271 Part II also reflected the intention of the House to include prairie pothole wetlands.

In Conference, the conferees adopted the House's basic definition of wetland (adopted from the Army Corps of Engineer's Section 404 wetland definition), and included the Senate bill's definition of hydric soil and hydrophytic vegetation. Which wetlands are included under swampbuster is ultimately based on the criteria for hydric soil and hydrophytic vegetation identification.

The final language is explicit in conveying Congress' intent to include seasonal wetlands, such as prairie potholes, within swampbuster's purview. In the wetland definition, the language refers to hydric soil "inundated or saturated by surface or groundwater at a frequency and duration sufficient to support . . . hydrophytic vegetation," that is, in order to be wetland, it does not have to be wet all year round.

The definitions for hydric soil and hydrophytic vegetation contain similar language, reenforcing the understanding that seasonal (Type I) wetlands are to be included.

Another indication of Congress' thorough consideration of the swampbuster language is evidenced in the development of exemptions to assure fair implementation, including an exemption which allows a producer to plant a wetland in its natural state. Under this exemption, if a producer has planted a field in the past, he has no fear that he continue to do so, provided he does not drain or otherwise alter it. Furthermore, Congress included an exemption which allows seasonal wetlands, such as prairie potholes, to be planted in dry years, but the law and the report language clearly states that the producer cannot alter its natural characteristics in such a way that in normal years it will not re-emerge as a valuable wetland.

Further indication of Congress' intent to eliminate government subsidies for wetland conversion can be found in Senators Boren and Grassley's introduction of S.1786, the Cultivation of Highly Erodible Lands and Wetlands Tax Act, on October 23, 1985. Senator Boren described the Agriculture Committee's inclusion of sodbuster and swampbuster as "one-step in a two-step process." S.1786 was adopted by Congress and included in the Tax Reform Act of 1986.

In summary, the swampbuster provision of the 1985 Farm Act was the culmination of years of growing concern over the preservation of wetlands, merged with the economic need to reduce crop surpluses. Its provisions were thoroughly and openly considered in both the House and Senate, as well as in Conference. Swampbuster did not emerge out of the blue.

The Rule Making Process

For this section, see Appendix 2, the Chronology of Implementation of Swampbuster. This chronology highlights the steps taken to put swampbuster

into practice. Reading through the process, it becomes clear why some farmers became frustrated with the process, for it was complicated, and occasionally contradictory messages were issued by both politicians and USDA. Furthermore, USDA experienced internal problems, having to overcome bureaucratic resistance and the Herculean task of educating its own personnel to implement the law.

Nonetheless, both the conservation and the agriculture communities were well aware of the process and had ample opportunity to contribute comments for the development of the final rule. In total, 2,696 individuals, corporations, environmental groups, water districts, financial institutions, members of Congress and others submitted comments on the interim rule, and in the final rule, USDA documented every contentious point.

Discussion of Elements of the Final Rule
Vis A Vis the Law and Congressional Intent

1. Wetland Determination

Section 1201 of the 1985 Farm Act provides for the definitions of wetland, hydric soil, and hydrophytic vegetation. Reflecting Congressional intent to include Type I, seasonal wetlands, all three definitions refer to the possibility of periodic flooding, saturation or ponding.

In its rule making procedure, USDA adopted these definitions and, as directed, developed criteria for the determination of a "predominance of hydric soils" and a "prevalance of hydrophytic vegetation."

In the interim rule, the USDA stated that the listing of hydric soils was set forth in the publication "Hydric Soils of the United States 1985" after five years of work by the National Technical Committee for Hydric Soils, chaired by SCS. It then went on to discuss the predominance test, concluding its discussion by stating "[t]his test of predominance was chosen because other alternatives considered do not protect significant wetlands such as potholes. . . ."

To determine if the hydric soil "under normal circumstances does support hydrophytic vegetation," the USDA chose the "National List of Plant Species that Occur in Wetlands," developed by the National Wetland Plant List Review Panel, to be used in conjunction with a statistical test of weighted averages. After the discussion of its choices, USDA concluded by stating: "The Department considered a number of methods to determine prevalence of hydrophytic vegetation. . . . The chosen evaluation process is primarily based upon research conducted by the Fish and Wildlife Service, U.S. Department of the Interior, and researchers at North Carolina State University. The weighted average method has been selected to determine the prevalence because it is relatively simple to perform, is as accurate as other methods, and is objective."

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In sum, USDA put significant effort into the development of criteria and tests for the determination of wetlands, and was conscientious with respect to the intent of Congress, specifically making sure that prairie potholes and other Type I wetlands were included. Confusion which surrounded the wetland definition -- and therefore, which wetlands are covered by swampbuster -- resulted more from misinformation concerning Congressional intent than farmers' lack of knowledge of their land.

2. Converted Wetland.

Because the enforcement mechanism is based on the identification of a converted wetland, this definition is crucial to swampbuster. The Farm Act defined a converted wetland as a wetland manipulated for the purpose of, or to make possible, production of an agricultural commodity if such production was not possible before such action. It further goes on to exempt any wetland which can be planted as a result of natural conditions, or if not assisted by the producer.

These exemptions directly address the concerns of North Dakota farmers who have for years planted the same fields and are now concerned that their continued production on their land could result in the loss of program payments. If the farmer has been able to produce on it in the past and he does not start any new drainage work now, he will not have a converted wetland. Furthermore, when wetlands do dry up, such as seasonal potholes in a dry season, he can plant it, as long as he does not alter it.

The converted wetland definition was incorporated into the final rule.

3. Program Ineligibility.

From the perspective of a conservationist concerned about the loss of wetlands, the law provides a loophole which can allow for the further loss of wetlands: a producer only becomes ineligible if he plants and produces a crop on a converted wetland. This means a producer could convert a wetland but not plant a commodity crop, and he would not lose his payments. Of course, it is unlikely that a producer would expend the time and money to drain a wetland if he could not use it for crop production, but the potential does exist for a producer to take a gamble that a conversion will be exempted or even overlooked. If the wetland is determined to be a converted wetland, he need only refrain from planting it, and he retains his program benefits. The wetland, however, could nevertheless be lost. In some cases, restoration is next to impossible.

This loophole gives the producer more latitude to convert wetlands, and is also in the final rule.

4. Third Party Drainage.

The third party drainage exemption which appears in the law under the converted wetland definition was included under the Exemption for wetlands

section of the final rule. This exemption is also regarded by conservationists as a potential loophole, but in the final rule the USDA drew the language tightly enough to reasonably assure that it will not be abused.

This exemption was included in the law to prevent producers from losing program eligibility if an outside party, such as a neighbor or a drainage district, undertook a drainage or diversion project which dried up his wetland, enabling him to plant a crop. In this case, the party who drained the wetland would have to answer to the law.

5. Conversion prior to December 23, 1985.

This provision of swampbuster, which exempts wetland conversion commenced before the date of enactment of the Farm Act, December 23, 1985, has been a major point of controversy. The issue of "commenced" creates a large window for the continued conversion of wetlands. We recommend that attention be focused on this exemption under which thousands of acres have been converted since the passage of the Farm Act on the grounds that conversion began before December 23, 1985.

From the perspective of the farmer, this exemption provides more than enough latitude to assure that contractual commitments made prior to the passage of the Farm Act are not broken and that investments are not lost.

Because a change in wording of this exemption could have grandfathered in thousands of additional acres, the contradictory messages issued by USDA on this point caused a particularly frenzied confusion in both the agriculture and conservation communities. To have simply granted an exemption on the basis of a vote at a water district meeting would have opened the law for excessive abuses.

The final rule, which requires specific contractual and/or substantial monetary commitments, holds closer to the intent of the legislators and is sensitive to farmers' prior obligations.

6. Maintenance of drainage.

As part of the grandfather clause exempting wetlands which were drained before enactment of the Farm Act, the final rules allow for the routine maintenance of a drainage system, providing that no additional acres are brought into production. Although not specifically provided for in the law, it assures that swampbuster does not preclude annual clean out of drains, but prohibits activation of abandoned drains. The inclusion of this provision indicates USDA's sensitivity to the difference between active and abandoned drainage systems.

7. Minimal impact.

This exemption in swampbuster, providing for wetland conversion of minimal impact, is likewise a potential loophole, if applied in a wholesale manner to a single class of wetlands -- for example, Type I prairie potholes.

The House Report, however, was explicit in stating that "[i]t is to be applied with great caution in recognition that most of this country's remaining wetlands are of considerable value." It is our understanding that this exemption, which was naturally included in the final rule, will be applied very rarely and only in full consultation with the Fish and Wildlife Service, as was stipulated in this House Report. Implementation should proceed as such, being that liberal application of this exemption could cause small, Type I wetlands in the prairie pothole and other regions to be "chipped away" (as the House Report put it) to nothing.

In conclusion, the final swampbuster rules are reasonably consistent with the intent of Congress. The wetland definition in particular was a difficult task because of the diversity of wetland types, but USDA developed objective criteria and tests which follow the spirit of the law. The development of the "commenced" exemption was particularly confusing, but eventually USDA promulgated regulations which allow farmers several exemptions, and which, over time and through strict implementation, could end budget outlays for the destruction of wetlands.

Implementation of Swampbuster

Audubon's major concern is fair and consistent implementation of the law. If swampbuster is enforced in some states but not others, wetlands will continue to be lost and the farmers who do comply will be penalized because they will be put at a relative economic disadvantage. On such an unlevel playing field the goals of the 1985 Farm Act cannot be met.

Thus far, there is little evidence of any enforcement, especially in North Dakota. Farmers there continue to drain wetlands, and not one North Dakotan farmer has lost his payments. Yet, North Dakota farm groups are complaining and seeking changes in the law.

Individual accounts from North Dakota consistently report that swampbuster has had little effect on the drainage of new wetland areas. In fact, the first year after passage of the Farm Act, observers saw little change in drainage activity. It was not until the fall of 1987 that drainage activity increased. The reason for the increased activity, however, was not in reaction to the threat of swampbuster enforcement, rather that it was a fair weather fall in North Dakota, and the farmers had the time and conditions to take their equipment into the fields to drain wetlands.

Non-exempt conversions, however, can be determined. ASCS annually photographs fields with 35mm film and keeps the past seven years on file. By comparing slides, SCS can bring violations to the attention of producers, and the producers can lose their program eligibility.

In North Dakota, over 90% of the farmers rely on the commodity programs, receiving over \$700 million in indirect payments in 1987. (See Appendix 3, Statistical Information and Background on North Dakota.) It is therefore

understandable that they fear future loss of payments for past swampbuster violations, and have come to Washington seek relief and exemption.

Currently both SCS and ASCS administer swampbuster, as provided for by law, in consultation with the Fish and Wildlife Service and other agencies. Wetland determinations, in particular, require the combined efforts of SCS and Fish and Wildlife. SCS has considerable technical expertise to make hydric soils determinations. The test for predominance of hydrophytic vegetation requires the technical expertise of both SCS, and the Fish and Wildlife Service. Perhaps the process has not been as fast as it could have been, but as farmers come to understand swampbuster's provisions, the administrative burden on SCS and ASCS will lighten and implementation should go more smoothly.

Conclusion

Congressional oversight is needed to assure that swampbuster is being enforced as intended, applying equally to North Dakota as well as all other states. Unfortunately, loopholes in the law and regulations exist. For now, however, the administrators of the law should be given time to implement the regulations to end the further loss of wetlands at taxpayer expense.

The overwhelming support for the conservation titles of the farm bill was testimony to the work of Senator ARMSTRONG and other Senators who are deeply concerned about the loss of top soil and wetlands in this country. The issue is now no different that it was in 1985 -- we must ensure that the Nation our children and grandchildren inherit is worthy of inheritance while also ensuring the future productivity of America's greatest natural resource -- our agricultural needs.*

* Senator Dale Bumpers (D-AR), April 7, 1987, Senate floor debate on amending the Conservation Title of the Food Security Act of 1985.

Swampbuster Legislative History and Public Outreach

- 4/9/84 Central Flyway Council (composed of state wildlife agencies of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wyoming) passed resolution at March 25, 1984 meeting to "make wetlands . . . and other such non-cropland acres ineligible for receiving price supports, land retirement payments, commodity loans, and storage payments if converted to cropland."
- 1/8/85 National Governors' Association, Committee on Agriculture and Rural Development, Staff Advisory Council meeting. Commissioner of Agriculture from Tennessee, William Walker, recommended adding swampbuster when enacting sodbuster in the 1985 Farm Bill.
- 4/4/85 House Agriculture Committee hearing on soil conservation provisions of 85 Farm Bill. Oral and written statements in favor of swampbuster made by Rep. Wolpe on behalf of himself and a bipartisan group of 21 other representatives (Udall, Seiberling, Kilde, Richardson, Moody, Bryant, Kostmayer, Follietta, Horton, Carper, Edgar, Mikulski, Florio, Leach, Boucher, Downey, Leland, Slattey, Levin, Oberstar, Tauke)
- Also by Sierra Club, National Audubon Society, and National Wildlife Federation. The Minnesota Department of Natural Resources and the International Association of Fish and Wildlife Agencies urged the removal of incentives for the conversion of wetlands to cropland. Including testimony submitted for the record, ten different groups requested such a provision.
 - Rep. Daschle questioned witness panels if sodbuster provisions should be extended to a swampbuster section.
- 4/15/85 Senate Agriculture Committee hearing on conservation title of the 1985 Farm Bill. Oral and written statements in favor of swampbuster made by National Audubon Society, Sierra Club, and Chesapeake Bay Foundation. Wildlife Management Institute spoke in favor of removal of federal incentives to convert wetlands.
- 4/18/85 House Agriculture subcommittee on wheat, soybeans and feed grains hearing. Sierra Club testified in favor of swampbuster.
- 4/23/85 House subcommittee marked up bill w/o swampbuster.
- 4/25/85 Senate Agriculture Committee field hearing held by Senator Zorinsky in Nebraska. Farmers testified in favor of swampbuster.

- 5/1/85 Senator Kasten introduced S.1035 containing swampbuster provision. Senator Zorinsky introduced S.1051 containing a similar swampbuster provision.
- 5/8/85 Rep. Daub (R-NB) introduced H.R.2425 to eliminate tax shelters for clearing land and draining swamps. Referred to House Ways and Means Committee for consideration of tax reform. Cosponsored by Lightfoot, Beiruter, V. Smith, McEwen.
- 5/13/85 Wildlife Management Institute letter to Lugar urging support of swampbuster.
- 5/22/85 Audubon letter to Lugar urging inclusion of swampbuster in Lugar's S.1000.
- 5/22/85 Editorial in Washington Post urging enactment of conservation reserve, sodbuster and swampbuster, cited Kasten and Zorinsky's swampbuster provision.
- 5/29/85 Congressional Research Service issued background document on swampbuster.
- 6/4/85 Letter to Sen. Zorinsky from Soil Conservation Society of America, American Farmland Trust, National Association of Conservation Districts, National Farmers Union, National Grange, National Farmers Organization, Sierra, Audubon, International Association of Fish & Wildlife Agencies urging him to go to bat for all conservation provisions.
- 6/28/85 Press Release from USDA on Secretary Block's conservation reserve proposal for 20 million acres for 10 years.
- 7/9/85 Full House Agriculture Committee in marked-up of H.R.2100, accepted Daschle's swampbuster amendment in conservation title by voice vote.
- 7/12/85 Senate Agriculture Committee mark-up of swampbuster began.
- 7/16/85 National Association of Conservation Districts' Tuesday Letter went out to all districts across the nation on with the announcement of swampbuster on front page.
- 7/18/85 Full Senate Agriculture Committee in mark-up of S.1714's conservation title considered four senators' proposals for the wetland definition in swampbuster. Pete Myers discussed compromise definition: included prairie potholes. Zorinsky stated that prairie potholes to be included. Sen. Kasten also spoke for swampbuster. Various provisions approved.

- 7/31/85 Full House Agriculture Committee accepted Daschle's swampbuster clarifying amendments by voice vote. Rep. Lewis's amendment, that wetlands not be just wet soil, was accepted by voice vote. Rep. Franklin's amendment to exempt small wetlands not predominantly wetland was rejected by 15 to 11.
- 8/4/85 Soil Conservation Society of America (Now Soil and Water Conservation Society) news release of Secretary Block's keynote at annual convention in St. Louis. News release cited sod and swampbuster provisions proposed for bill.
- 8/9/85 News release from House Agriculture Committee summarizing provisions tentatively approved by the full committee. Swampbuster fully described.
- 8/9/85 Letter from Rep. Hal Daub, (R-NB) asked Audubon to support his amendment to the Tax Reform Act to deny tax benefits to sod-busters and swampbusters. Definitions to be same as in farm bill. Byron Dorgan (D-ND) cosponsored Daub's proposals in Ways and Means Committee.
- 8/11/85 Audubon sent out alert to activists urging support of swampbuster in Farm Bill.
- 9/13/85 House Agriculture Committee Report 99-271, Part I, on H.R.2100, ordered to be printed. Swampbuster section discussed, including value of prairie pothole wetlands.
- 9/18/85 House Merchant Marine Committee Report 99-271, Part II, on H.R.2100, ordered to be printed. Concurred with Agriculture Committee and offered clarification on the wetland definition and other matters.
- 9/20/85 Full House began consideration of H.R.2100.
- 10/8/85 Full House passed H.R.2100, which included swampbuster provision by 282 to 141.
- 10/21/85 Group letter from conservation and farm groups to Senators urging support of S.1714, Senate Farm Bill vehicle including swampbuster.
- 10/23/85 Sens Boren and Grassley introduced S.1786 to amend Tax Code to disallow certain credits and deductions to preclude capital gains treatment regarding the use and disposition of certain highly erodible lands and wetlands. Tied to farm bill, called second step in 2-step process.
- Boren told the Senate in his introductory remarks, "If we are going to develop sound agricultural policy, we have to go

beyond the purview of the Agriculture Committee. We must begin to address the problems of agriculture that are caused by the tax code."

- 10/24/85 Letter from Audubon to Rep. Daub supporting tax reform efforts to complement Farm Bill conservation provisions (H.R.2425).
- 10/25/85 Full Senate began consideration of S.1714.
- 11/23/85 Full Senate substituted H.R.2100, as amended, for S.1714, by a vote of 61-28.
- 11/26/85 News release by Senate Agriculture Committee on Farm Bill. Swampbuster included and cited in news summary.
- 12/18/85 Both the Senate and the House adopted the Conference Report.
- 12/23/85 Food Security Act signed by the President.
- 12/23/85 Editorial in New York Times endorsing the conservation title, including swampbuster. Praised swampbuster authors.
- 1/16/86 Audubon sent out alert to activists on tax reforms for wetland conversion.
- 2/20/86 Audubon submitted statement to Senate Finance Committee on S.1786.
- 10/22/86 Tax Reform Act of 1986 signed by the President. Included complement to conservation title of Farm Act.

APPENDIX 2

Chronology of Implementation of Swampbuster

- 3/10/86 First notice #318 circulated to state and county offices on swampbuster provision, set forth intention to implement law literally.
- 3/12/86 Rep. Dorgan brought in Mike Dwyer, Steve Hoetzer, Cliff Issendorf, several legislative aides to discuss how N.D. was being punished for protecting wetlands longer than sister states of Minnesota, Iowa and Illinois who had converted most of their wetlands. They wanted an exemption from swampbuster. Wildlife Management Institute (Jahn), Wildlife Federation (Wenz) and Audubon (Hinkle) as well as CRS (Zinn) were present.
- 4/4/86 USDA issued notice #319 in response to "questions raised about notice 318 (March 10 notice) and set forth policy that a farmer would need to be informed whether or not his land was classified as wetland before he could be declared ineligible for program benefits."
- 5/1/86 USDA issued a "clarification of Notice CP-319" (April 4 notice) stating that USDA could not take back program benefits already provided in FY 86 before regulations were promulgated. But a farmer would have to certify that he had not converted wetlands to crop production after Dec. 23, 1985 or he would lose program benefits for each crop year in which he planted on converted wetlands.
- 5/28/86 Sen. Stevens enacted an exemption in the supplemental appropriations bill for tundra underlain by perma frost in Alaska. This exempted several hundred thousand acres of wetlands in central Alaska covered with brushy vegetation. No manipulation of soils is necessary, as brush is removed, soils thaw, and vegetables, barley and oats, can be grown. No wildlife effects at all.
- 6/27/86 Proposed interim rule published for comment in the Federal Register (2,696 comments submitted)
- 9/10/86 Sen. Andrews tried to freeze federal funds for swampbuster until regulations could be reviewed and approved by the full Senate Appropriations Committee. (Attached Post article on this move)
- 9/11/86 Amendment #2. USDA signed off on a "clarification" regarding "commenced" issue. Wetland conversion will be regarded as commenced if:
- (A) A plan for the drainage of the area was approved through a vote of landowners in such area before 12/23/85.

- 2 -

(B) The county ASCS committee determines the approved plan for the drainage reasonably contemplated such person's drainage activity within the project area.

(C) The drainage activity is completed by January 1, 1995.

11/20/86 Amendment #5. USDA amended the ASCS Handbook to exempt individuals located within jurisdiction of water resource district boards. Wetlands converted by individual farmers will be exempt as "commenced" if the conversion was done by water districts, persons in the jurisdiction of a water district board, or similar entity, and (1) the plan for drainage was approved by landowners before 12/23/85; and (2) either

(A) Earth moving or land clearing to construct the drainage project had begun.

(B) A contract providing for the earth moving or land clearing had been signed by the appropriate parties.

(C) Substantial funds had been otherwise legally committed for the implementation of the drainage project.

and (3) the person's drainage activity was identified in or reasonably contemplated as a part of the drainage plan.

2/4/87 Amendment #6 further specified that the farmer's drainage activity needs to be specifically identified in the approved plan.

9/17/87 Final rule published in F.R. tightened some loopholes, left others highly discretionary.

THE WASHINGTON POST

SATURDAY, OCTOBER 11, 1986 A11

Political Maneuver Imperils Wetlands

USDA Assists Sen. Andrews

By Ward Sinclair
Washington Post Staff Writer

Bowing to protests by a politically endangered North Dakota Republican senator, Agriculture Department officials have made changes in proposed soil conservation rules that could result in thousands of new acres producing surplus grain.

The changes came after Sen. Mark Andrews, an Agriculture Committee member facing an uphill reelection fight, threatened to bar USDA from carrying out the 1985 farm law's "swampbuster" section, which is intended to halt the conversion of fragile wetlands to crop production.

Andrews was angry because, as proposed by USDA, the pending regulations could have barred some North Dakota farmers from receiving any federal benefits if four major drainage projects converted wetlands into wheat and barley fields.

Generally, such projects are economically feasible only because of assurances that such crops will be eligible for federal crop loan protection and direct subsidy payments.

Deputy Secretary Peter C. Myers, who approved the change that satisfied Andrews, denied in an interview that politics played a part or that it weakened the strict congressional language.

But the decision—made before the public-comment period on the proposed regulations expired—has infuriated environmentalists and prompted officials of the Interior Department's Fish and Wildlife Service to ready a protest to the USDA.

"They've essentially thrown swampbuster out the window," said one Interior official.

At a House Agriculture Committee oversight hearing last week, Maureen K. Hinkle of the National Audubon Society described the USDA action as "a serious breach of administrative practice."

The Sierra Club's Daniel Weiss called it an "unprecedented action" that violates "letter and spirit" of the 1985 farm law. "At a time when USDA is spending billions to reduce overproduction, American farmers and taxpayers cannot afford to have tax dollars used for the conversion of still more wetlands to commodity production," he said.

Congress ruled that farm-program benefits would be denied to farmers who had not "commenced" drainage projects—that is, moved earth or spent significant amounts of money on them—before Dec. 23, when the bill was signed into law.

In one North Dakota county, more than 300 applications for drainage permits were filed in December in hopes of beating the deadline.

In its new interpretation, USDA said it would consider a project "commenced" if it had been approved by a vote of land owners before Dec. 23. This could clear



Mark Andrews boasts of swaying agriculture secretary.

the way for scores of wetlands conversions that otherwise would be ineligible for subsidies.

Although Myers denied a political connection, the sequence of events leading to the decision suggests cause and effect.

Andrews made his proposal on Sept. 9 at an Appropriations subcommittee meeting. When Chairman Thad Cochran (R-Miss.) objected, Andrews said he would wait until a Sept. 11 meeting of the full committee.

On Sept. 10, committee Chairman Jesse Helms (R-N.C.) and other farm-state senators circulated a letter warning that the amendment would encourage surplus crop production on drained wetlands.

Conservationists braced for a Sept. 11 battle, but Andrews surprised them. He did not offer his amendment and left the committee room without mentioning his objections.

What they did not know was that on Sept. 9 four top USDA officials had signed off on the new interpretation of "commenced" that would clear the way for the wetlands projects in North Dakota.

Myers gave final approval to the change on Sept. 11. That same day, Andrews told the Fargo Forum, a newspaper in his state, that North Dakota no longer had a problem because he had persuaded Secretary Richard E. Lyng to "clarify" the swampbuster language.

A high-level USDA official who declined to be identified agreed that the decision could open a big loophole in the department's conservation program. But he said it was spurred by fears that Andrews and others might otherwise take stronger action.

Myers insisted that the changes "are not locked in cement." He said he had warned lower-level officials at USDA that the language would be subject to public comment until Oct. 25 and that it could possibly be reversed.

"I feel quite strongly about this," Myers said.

APPENDIX 3

Statistical Information and Background on North Dakota
for Swampbuster Hearing
January 26, 1988

I. Commodity Program Participation in North Dakota:

Commodity	Eligible base acreage (million acres)	Percentage of base enrolled
Wheat	12.8	98
Corn	1.2	95
Barley	3.4	95
Oats	1.2	85
Sorghum	0.007	91

North Dakota's participation rate is the highest in the country.

In the next chart, direct payments are more reflective of program costs because the government's receipts for commodities acquired under loan and other price support programs are not accounted for by this data.

Gross federal payments (CCC) to North Dakota farmers, 1987

(millions of dollars)	Payment type
9.3	Dairy
821.0	Commodity loans, purchases, and other price supports
167.2	Direct deficiency payments, feed grains
500.1	Direct deficiency payments, wheat
1.6	Direct deficiency payments, wool
69.6	Grain reserve
13.2	CRP rental payments
1,582.0	Gross total

II. Wetlands in North Dakota

North Dakota has lost 60 percent of its wetlands.

Prairie Pothole Emergent Wetland Loss (millions of acres)

	Originally	Remaining
Minnesota	12.5	3.5
North Dakota	5.0	2.0
South Dakota	2.0	1.3
Iowa	2.3	0.026

The region is estimated to be losing 1 to 2 percent of its wetlands to agriculture each year. North Dakota is thought to be losing the most at a pace of 15 to 25,000 acres per year.

North Dakota's prairie potholes support 140 different species of birds and produce half the duck raised in the lower 48 states -- 2 to 3 million each year. Even small potholes which may only be wet in the spring are valuable to waterfowl for the food produced in them.

Prairie potholes also provide flood control, reduce run off and sedimentation, and recharge ground water.

III. Other Federal Programs Concerning Wetland in North Dakota

The Fish and Wildlife Service (FWS) is authorized to purchase wetlands outright and to purchase easements on wetlands. In North Dakota, FWS went about buying 328,000 acres and acquiring easements on 1,250,000 acres of wetland until a 1977 North Dakota law made their activities illegal. Farmers and politicians claimed federal interference in North Dakota matters. In 1983, the U.S. Supreme Court overturned the 1977 law.

The Water Bank Act of 1970 authorizes the Agricultural Stabilization and Conservation Service (ASCS) of the U.S. Department of Agriculture (USDA) to enter into ten year contracts with farmers, making annual rental payments for the preservation of wetlands and adjacent upland. The ASCS targets wetland regions which are especially valuable and vulnerable to conversion.

Under the Water Bank program, North Dakota receives more rental payments than any other state. Of the \$7.0 million worth of Water Bank contracts signed in 1987, \$2.4 million of them were in North Dakota.

Water Bank Status as of 9/30/87

	Allocated for new contracts	contract	acres under
North Dakota	\$3,185,000	166,000 acres	
Total program	\$8,400,000	513,172	

The number of acres enrolled in this program is steadily declining because of decreased funding and rising rental costs. From 1972 to 1981, the program was funded at the authorized level of \$10 million per year, but in 1982 the appropriations level dropped to \$8.8 million, and in 1986 it dropped to \$8.371 million per year, where it remains today. At this decreased funding level and because of the higher rental costs, the total number of contracts which expire each year cannot be renewed, and number of acres continues to decline.

A potential problem with the Water Bank program is that type I and II wetlands are not eligible unless associated with other wetlands entered in the program.

According to Fish and Wildlife sources, swampbuster has not halted the drainage of wetland. On a nationwide basis, only two farmers have been denied subsidies in Minnesota and Georgia, and in North Dakota, drainage activity has proceeded as before, according to sources in the state: the fall following enactment of the 1985 Farm Act, farmers did not react to the swampbuster provision by either accelerating or ceasing wetland conversion. The next fall, however, a sharp increase in drainage was noted by observers and acknowledged by farmers, drainage companies, water districts. The cause of the increase, however, was not cited as a reaction to swampbuster, but because of fair weather which gave the farmers the time to go out into the fields with their heavy equipment.

Both North Dakota and Minnesota Fish and Wildlife Service sources state that their people have made "dozens and dozens" of reports of suspected violations, in writing, to ASCS, but to no avail. The ASCS response is typically to write the farmer a letter, telling the farmer that the Fish and Wildlife Service reported them -- thereby perpetuating farmer antagonism toward FWS. Most of these cases are exempted under a commenced ruling.

ASCS is supposed to run a 20% spot check for swampbuster compliance.

IV. Conclusion

North Dakota farmers are feeling an economic crunch, need the federal subsidy payments, and want to expand their production acreage. Minnesota farmers are also experiencing economic hardship.

At the same time farm expansion should be discouraged because of over production and excess surplus levels. Swampbuster was enacted as much for the purpose of slowing down farm expansion as to provide habitat for ducks.

1987 Ending Stocks for Selected Commodities

Wheat	1.821 (billions of bushels)
Corn	4.123
Barley	0.293
Oats	0.115
Sorghum	0.682

The Acreage Reduction Program (ARP), the Paid Land Diversion (PLD) program and other programs have been established to set aside base acreage to help reduce surpluses. In 1988 they shall be continued at the high level of 27.5% (25% ARP/2.5% PLD) for wheat and at 20% (17.5% ARP/2.5% PLD) for feed grain acreage. In North Dakota, that means 4.76 million acres will be set aside, more than the TOTAL wetland acreage that remains in the whole state!

Acreage set aside under commodity programs in North Dakota, 1987

Wheat	3,500,000 (acres)
Corn	290,000
Barley	746,000
Oats	228,000
Total	4,764,000

Times maybe tough for farmers in North Dakota, but expansion will not help farmers, and will definitely destroy precious wetlands.

0753P

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STATEMENT BY
the
SOIL and WATER CONSERVATION SOCIETY
for the
COMMITTEE on AGRICULTURE, NUTRITION, and FORESTRY
U.S. SENATE
by
NORMAN A. BERG
WASHINGTON REPRESENTATIVE

March 24, 1988

Implementation of the Conservation Provisions of the Food
Security Act of 1985

On November 1-3, 1987, the Soil and Water Conservation Society provided the leadership for a conference held in Kansas City. More than 500 individuals, from virtually every corner of the United States, and a few from other nations, including Canada, met to assess the conservation provisions of the 1985 Farm Bill. "American Agriculture at the Crossroads, A Conservation Assessment of the 1985 Food Security Act", was the theme of that meeting. That conference, sponsored by the Society, the U.S. Department of Agriculture and the Joyce Foundation, had the active support of thirty co-sponsors. All levels of government were represented, along with a broad cross-section of interests from the farm and environmental communities, academia, agribusiness, the news media, and many users of land.

The latest Journal of Soil & Water Conservation (January-February, 1988-Volume 43, Number 1) has each of the talks that were given by the speakers at that conference. Copies of that issue of the Journal can be made available to the Committee.

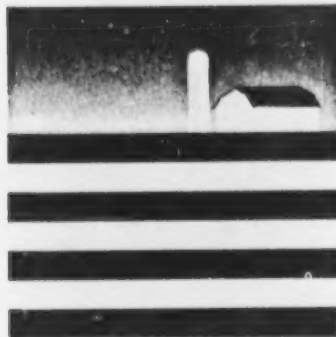
Kenneth A. Cook, Senior Associate with the Conservation Foundation, prepared a "white paper" for the Soil and Water Conservation Society (SWCS). Its purpose is to summarize and to interpret the facts presented and opinions expressed at that conference. Of special value was the feedback captured from the several regional discussion groups that were held as an important part of the total conference program. Copies of this excellent document can also be made available to the Committee. It could be incorporated into the hearing record.

All participants at the Kansas City sessions will receive a copy of this paper. In addition, copies will be provided to the U.S.D.A. agencies responsible for implementation of Title XII, and all co-sponsoring organizations of that historic meeting.

The Soil and Water Conservation Society, with about 13,000 members, as an international organization, is dedicated to advancing the science and art of good land and water use worldwide. Our Society, along with many others, supported the enactment of the conservation provisions. We have also been monitoring the implementation of each of the conservation features of P.L. 99-198. We will continue this effort.

SWCS is now in the process of conducting another national survey of USDA administrators, at the county level, on their views of this legislation. This survey questionnaire is going to a sample (one in five) of all county Extension agents, ASCS executive directors, and SCS district conservationists. This effort is a follow-up to a similar survey done a year ago by SWCS, in cooperation with Successful Farming magazine. The results of this latest survey will be transmitted to USDA officials prior to release in our Journal and to the media. SWCS will be pleased to provide the results to the Congress.

WHITE PAPER



AMERICAN AGRICULTURE AT THE CROSSROADS
A Conservation Assessment of the 1985 Food Security Act

Prepared for SWCS by
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PREFACE

Many people term the Conservation Title (Title XII) of the Food Security Act of 1985 the most significant land and water conservation legislation of the past half century. The provisions of that title--conservation reserve, sodbuster, swampbuster, and conservation compliance--along with the conservation easements provision elsewhere in the act, represent a unique, if not revolutionary, attempt by policymakers in the United States to link the stewardship of land and water resources with farmers' and ranchers' eligibility for federal farm program benefits.

President Ronald Reagan signed the Food Security Act, which is commonly referred to as the 1985 farm bill (P.L. 99-198), on December 23 of that year. Since then, six sign-ups for the conservation reserve have been held, and the nation is well over half way toward the program goal of putting 45 million acres of highly erodible cropland into a more permanent, protective cover of grass, trees, or wildlife habitat over a five-year period. Final administrative rules have been issued by the U.S. Department of Agriculture on the sodbuster, swampbuster, and conservation compliance provisions, and efforts are proceeding nationwide to make the various highly erodible land and wetland determinations and to develop the conservation plans needed to implement these provisions. Pending yet are final administrative rules on the conservation easements provision.

Given this flurry of activity since the legislation's enactment and the clear indication that most of the nation's farmers and ranchers will be subject to the requirements of some or all of the provisions in the Conservation Title, the Soil and Water Conservation Society in late 1986 asked USDA for its support of a national conference to assess how implementation of the provisions was progressing. USDA subsequently granted that support, financial and otherwise. Generous financial support for the conference was also provided by the Joyce Foundation of Chicago, Illinois, which has done much over the past decade to promote soil and water conservation in this nation.

This white paper is based on that conference, "American Agriculture at the Crossroads, A Conservation Assessment of the 1985 Food Security Act," held November 1-3, 1987, in Kansas City, Missouri. Its purpose is to summarize and interpret the facts presented and opinions expressed during the conference. Of particular value should be the feedback captured from the regional discussion group sessions that were an important part of the conference program.

There is no attempt in this white paper to prescribe solutions to the issues or problems identified. To reach consensus among the broad cross-section of interests represented at the conference would have been impossible. Instead, the conference served as a forum, and a useful one at that, to test the winds of change and establish channels of communication among the many interests with a stake in what the Food Security Act strives to accomplish. Hopefully, this white paper will further these same objectives.

Max Schnepf, Editor of Publications
Soil and Water Conservation Society

Chapter 1

Introduction

We knew things would change when the conservation provisions of the 1985 farm bill became law. But nobody knew how much.

Peter C. Myers, Deputy Secretary
U.S. Department of Agriculture

Title XII of the Food Security Act of 1985--Public Law 99-198--is entitled simply "Conservation," but the provisions it contains and the sweeping changes it appears to have set in motion have, in many respects, redefined the term "conservation" as previously used in American agriculture.

The most central change, in principle at least, is that conservation no longer implies farmer activities or government programs that exist, separately and unequally, outside the mainstream of the agricultural economy and farm policymaking. Deputy Secretary of Agriculture Peter C. Myers has observed that the 1985 farm bill has "woven...conservation efforts into the very fabric of our farm policy."

Redefinitions of most aspects of conservation flow from this central change. Title XII makes conservation practices on millions of acres of land an eligibility requirement for many U.S. Department of Agriculture (USDA) programs, including most commodity and credit programs. Because the majority of farmers feel that current economic circumstances leave them little choice but to participate in one or more of these programs (and participation rates are, in fact, quite high), conservation no longer merely implies farmers availing themselves, on a voluntary basis, of the technical and financial assistance available through traditional USDA conservation programs. Conservation will become an economic imperative for many farmers in the near term. Given the financial influence of USDA farm programs in the recent past and for the foreseeable future--program payments in 1987-88, for instance, accounted for 40 percent of net income for all of agriculture--conservation activities suddenly rank among the most important business decisions farmers will make, individually and collectively, over the next few years.

As a result, local personnel of the Soil Conservation Service (SCS) and the Agricultural Stabilization and Conservation Service (ASCS), and to some extent conservation district officials and staff, have taken on a distinctly new role since passage of the Food Security Act: They are implementing and enforcing programs and policies that potentially have direct economic effects on hundreds of thousands of farmers and hundreds of millions of acres of land. Some farmers and conservationists welcome this change; others are decidedly uncomfortable with its quasi-regulatory nature.

Conservation planning and education activities, the stock in trade of soil conservation before 1985, are in many respects more important than ever, but they also have changed. They have had to. Title XII has caused planning and education to be mounted on an unprecedented scale. The most salient example: USDA estimates that some 800,000 new soil conservation plans will have to be prepared by 1990.

Planning and education are focused on acute conservation problems (highly erodible land and wetlands) that were often by-passed in traditional conservation programs. Farmers who have never set foot in an SCS office are doing so now, and some are not happy to be there. Deadlines set in the Food Security Act have given conservation planning an urgency it has never had before. The deadlines have also forced innovation and streamlining in planning techniques and procedures. Field determinations of erosion rates, wetlands

characteristics, or the adequacy of erosion control now have economic as well as conservation significance; for many farmers, eligibility for tens of thousands of dollars worth of farm program benefits may hang in the balance. The crush of the Food Security Act workload has profoundly affected day-to-day activities of local USDA and conservation district personnel. And in a great many conservation districts, priorities established by district boards have been swept aside by the overwhelming demands of Title XII.

In November 1987, more than 500 individuals from virtually every part of the country, representing all levels of government, a broad cross-section of the farm community, the environmental movement, the news media, academia, and agribusiness gathered in Kansas City to assess the new meanings of agricultural resource conservation that were introduced by the Food Security Act. Among the objectives of the two-day conference, according to co-chairman Marlin L. Edwards of Pioneer Hi-Bred International, was to promote:

- "a greater appreciation for the need to cooperate between agencies, but more importantly that the public and private sectors find ways to work together effectively and efficiently in implementation of the farm bill conservation provisions;

- a greater appreciation of the educational support needed to assist farmers....

- a greater awareness on the part of farmers and agribusiness of the amount of effort which will be required...."

Edwards also hoped the conference would:

- "[expose] the sensitivities in this farm bill mandate...[and] cause us to carefully implement the provisions with the best information...."

- [provide] ideas which can be used to assist us in the large task we face. To some it may be a computer program, to others an idea of how the public agencies may involve the private sector...to assist farmers in the adoption of conservation farming systems;

- [make participants] more informed about the conservation provisions... and [provide] an agenda of activities and contributions we can make to agriculture in the years ahead."

This white paper attempts to capture for those who attended the conference, as well as for those unable to attend, the range of information and opinions that emerged from more than 40 presentations at the conference on virtually every aspect of Title XII and its implementation. It also summarizes the reports from seven discussion groups that assessed the Conservation Title from a regional perspective.

This document is not a conference proceedings. Limitations of time and space did not permit direct quotation of each of the conference speakers, or all of the individuals who subsequently sent comments on the conference to the Soil and Water Conservation Society. Every attempt was made during drafting and review, however, to make sure the salient points raised during the conference are presented herein.

It is important to note that the conference was not designed to forge consensus on specific issues or recommendations. Accordingly, this document presents but does not prescribe particular viewpoints or specific policy or administrative reforms.

The Scope of Title XII

A brief look at the scope of the Conservation Title and the impressive statistics it conjures up may suggest why Title XII has been so routinely termed "historic" or "revolutionary," literally from the moment it was signed into law.

The first of the Title XII provisions to be implemented, the Conservation Reserve Program (CRP), had the distinction of becoming one of the country's major natural resource conservation programs within 18 months of its inception.

By the end of 1987, nearly 23 million acres of highly erodible cropland--the type of land that often has eluded traditional government conservation programs --was slated for protection by plantings of grass or trees for 10 years under CRP contracts. Farmers have enrolled this land voluntarily; in return, they will receive payments from the federal government totalling more than \$13 billion over the life of existing CRP contracts. In effect, the CRP has sharply increased--in fact, it has more than quadrupled--the nation's federal soil conservation budget to well over \$2 billion each year for the next decade. At the current enrollment level, the program is expected to reduce soil loss from erosion by some 460 million tons a year (about 20 tons per acre annually).

Conservation efforts potentially as important as the CRP are underway as a result of Title XII's "sodbuster" and "swampbuster" policies, which were designed, according to implementing regulations issued by USDA, "to remove the incentive that certain benefits provided by the Department could give producers to cultivate highly erodible land or to convert wetlands for the purposes of producing an agricultural commodity."

Sodbuster denies farmers eligibility for most USDA programs, including the widely subscribed commodity programs, if they cultivate highly erodible land without following a locally approved soil conservation plan. Under regulations issued by USDA, the policy applies to two extraordinarily large categories of land. Highly erodible land that was not cultivated between 1980 and 1985 became subject to sodbuster immediately after USDA formally proposed the interim rule on June 24, 1986; some 227.3 million acres of such land were identified by USDA.

Under the "conservation compliance" provision of sodbuster, all highly erodible cropland, regardless of cropping history, becomes subject to sodbuster sanctions beginning in 1990, at which time farmers must begin following approved conservation plans that must be fully implemented by 1990. This category of land, according to USDA, comprises 117.9 million acres of highly erodible land. Because the policy applies when at least one-third of a field is highly erodible, another 47 million acres of nonerodible land are encompassed by conservation compliance.

According to USDA, the total of 345.2 million acres of highly erodible land subject to sodbuster "amounts to 24.5 percent of all agricultural land and accounts for 58 percent of all cropland erosion."

Similarly, under "swampbuster" farmers can lose eligibility for most federal assistance programs administered by USDA if they convert wetlands through drainage or other means for the purpose of producing an agricultural commodity. Technically, swampbuster applies to all remaining wetlands in the United States (except certain wetlands in Alaska exempted by Congress in 1987), that is, an estimated 90.9 million acres, according to USDA's 1982 National Resources Inventory (NRI). Of these, some 78.4 million acres are on nonfederal land, although, according to the 1982 NRI, only about 5 million acres have significant potential for conversion to agricultural use.

Will Title XII Endure?

Without question, the Kansas City conference revealed a great deal of enthusiasm about the conservation potential of Title XII programs and policies. But that enthusiasm was tempered by more skeptical--some may prefer realistic--appraisals of what the Conservation Title actually will accomplish. For all their apparent precision and scale, USDA's estimates of how much land will be protected, how much soil erosion will be reduced, and so forth, are of course nothing more than numerical prognostications. In the final analysis, these impact estimates will be benchmarks only for measuring the success of Title XII or the degree to which the reach of the law exceeded its grasp. A wide range of opinion was evident in Kansas City regarding the potential impact of Title XII, the prospects for rigorous implementation, and the possibility of future

legislative change to strengthen the Conservation Title--or weaken it.

"We know the skeptics are raising questions like, how soon will these provisions go away? If enough people hold off getting a conservation plan, will Congress extend the deadline? Will the standards change? Will they get more strict, or will they loosen up?" said Deputy Secretary Myers in his statement to the conference. "If you know someone who's holding back getting a conservation plan because of questions like these, tell them they are taking a gamble...a big gamble.... Will the conservation provisions go away? I don't think so. Not if you look at the coalition of farm and environmental groups that got them established. Those groups fought long and hard to bring more consistency to government commodity and conservation programs. They won't give up now because some folks drag their feet."

But Dean Kleckner, president of the American Farm Bureau Federation, told the conference, "Let us remember a truth that is easily forgotten. Actually, it is a rule of politics. One Congress cannot blind another. Maybe this reminder seems pointless here and now, but I think not. When it comes to farm programs, one Congress hardly gets done writing what the next one wants to re-write, or to completely erase." Citing a Farm Bureau policy, Kleckner said, "In the event that conservation compliance provisions are not modified to reduce the economic hardships on producers, we urge legislative repeal."

Other speakers commented on the pitfalls of tying conservation requirements to farm programs and economic circumstances that can change dramatically in the space of a few years. "Conservation policy historically accommodates production policy in the United States," Marty Strange, co-director of the Center for Rural Affairs in Walthill, Nebraska, told the conference. Strange added, "When production is surplus and prices low, conservation is convenient; when export sales are brisk and prices robust, the commitment to conservation withers. Nothing in the current set of policies suggests anything substantively different. The effectiveness of the Conservation Reserve Program, for example, depends not only upon short range changes in demand for farm products, but in a long-range commitment to enforce conservation compliance, sodbuster, and swampbuster after the 10-year CRP contracts expire."

Bill Laycock, head of the Department of Range Management at the University of Wyoming, sounded a similar theme: "Will the current conservation reserve succeed where the soil bank failed and result in permanent retirement of these erodible lands? The sodbuster and compliance provisions of the 1985 farm bill should help accomplish this. The main question is whether USDA policy and congressional legislation will remain resolute in preventing re-plowing of these lands when CRP ends. History does not provide much encouragement that such resolve will prevail. We seem to be very willing to modify our conservation laws and policies to take advantage of short-term economic opportunities."

Clarence Durban, president of the National Association of Conservation Districts, expressing a view voiced by many conference participants, said it was imperative to motivate the landowner: "For the first time in our federal conservation programs, we have provided a strong incentive for landowners to develop a dedicated land stewardship ethic. But the agriculture community is, in many cases, adopting a wait-and-see attitude. There is still a lot of skepticism among farmers as to whether these programs will--or even should--work. While the commitment and initiative of the American farmer cannot be doubted, we have to keep in mind that all this is coming at a time when the agriculture community is under a great deal of economic stress. Given the hard times farmers are experiencing, it is no wonder that they would greet these new programs with some skepticism. After all, the farm bill could have a considerable impact on their financial situation.... A point that some outside our conservation network may not understand is this: If farmers don't accept and support the conservation provisions of the farm bill, success will surely elude us all."

In summing up the proceedings, conference co-chairman and Assistant Secretary of Agriculture George Dunlop said, "We should not underestimate the enormity or complexity of the tasks [ahead].... The Department of Agriculture in all of its history has never been asked by Congress or by the public to undertake such a broad, comprehensive, consistent, and coordinated program that involved all of its agencies into one problem-solving enterprise."

Secretary Dunlop stressed the need for continued cooperation among government personnel, farmers, and the conservation community and consistency in the administration of the Title XII provisions. In his view, "If I had to sum it up....what we're doing is working. The new laws are being successfully implemented. Our most fundamental expectations are being met. And indeed, while there are many complexities, challenges, and problems which remain unresolved, they're being addressed."

"This conference has been successful in pointing out in very specific detail that we can and will have the kind of implementation of the Food Security Act that will be a model for government and the private sector working together in a way they never have," Secretary Dunlop concluded. "I believe that this conference will demonstrate that we can improve the ability of agricultural groups and farmers to work together with conservation and environmental organizations...and that this conference will provide a foundation for even more initiatives and cooperation as we move into the 1990s and the 21st century...."

Chapter 2

Conservation Reserve Program

With its goal of converting 40 to 45 million highly erodible acres to permanent cover under 10-year contracts, the CRP is without doubt the most ambitious long term land retirement program ever enacted.

Milton Hertz, Administrator
Agricultural Stabilization and Conservation Service

The CRP was the first of the major provisions of Title XII to be implemented on a large scale. After five sign-ups by farmers, CRP land could be found in virtually every part of the country, though much of the 23 million acres enrolled by the end of 1987 were in the Great Plains and Midwest regions. By virtue of its scale and attendant visibility among conservationists, farmers, and agricultural policymakers, the success of the CRP in meeting a number of objectives will be an important litmus of the overall success of Title XII. In general, the CRP was favorably reviewed at the Kansas City conference. A recent survey by the American Farmland Trust (AFT) corroborated this finding among participating farmers, more than 95 percent of whom expressed satisfaction with the program. "It's enjoyable to come and talk about a successful farm program," said AFT's president, Ralph Grossi. "As a dairy farmer myself, I'm very well aware of the other kinds of farm programs."

In both plenary and regional sessions, however, a number of significant criticisms were raised about the program's performance to date, and numerous recommendations--some modest, some sweeping--were offered to improve the CRP's future expansion and operation. ASCS Administrator Milton Hertz acknowledged, "Yes, we are pleased with the overall progress of the program. But that does not mean there are no problem areas requiring attention, and that there are no questions about our continued progress as we look ahead to 1990."

The CRP is designed to encourage farmers to take highly erodible land out of crop production and plant it to grass or trees by entering into 10-year contracts with USDA. Enacting the program, Congress clearly sought two broad types of benefits: environmental, through reduction of soil erosion and enhancement of wildlife, and economic, through financial assistance to farmers and reduction of crop production (with possible attendant benefits of reduced commodity program outlays).

Farmers submit bids to the local ASCS office for the amount of rental payment they will accept (per acre annually) to convert such cropland to protective vegetation for the entire 10-year period. In return, farmers plant grass, trees, or other vegetation according to a conservation plan developed and approved by the local conservation district. USDA pays up to 50 percent of the cost of establishing the protective vegetation, which may include grasses and legumes, forest tree plantations, permanent wildlife habitat, field windbreaks and shallow water areas for wildlife, or any combination of these practices. Eligibility for the program is limited to fields having two-thirds or more highly erodible cropland.

Off To a Fast Start

"The ink was barely dry on the 1985 act when ASCS announced the first signup for the new reserve," Hertz told the Kansas City conference. "We were charged with implementing the program in 60 days, so we had to work fast and keep things as simple as possible. The results of that first sign-up, in March

1986, were admittedly disappointing. Of 4.8 million acres bid, only about 840,000 were accepted. But since that shaky start, farmers have become more informed about CRP and its benefits...."

Administrator Hertz concluded, "Believe me, none of us expected we'd be this far along in only a year and a half, having signed up nearly 23 million acres--more than half the five-year goal. And this has been achieved at a reasonable cost to the government. To date, the average annual rental cost is \$48.40 per acre, which amounts to a total annual cost of about \$1.1 billion in rental payments for acreage enrolled so far."

At the time of the conference, USDA had initiated an interagency analysis of the CRP, including the program's cost-effectiveness (results should be available sometime in 1988). Ralph Grossi presented the results of an analysis conducted for AFT by Economic Perspectives, Inc. "The study showed that the conservation reserve reduces deficiency payments by more than the rental rate and the costs of establishing cover," Grossi stated. The CRP appears to be more cost-effective in reducing production than a paid diversion and reduces government commodity loan and storage costs. The analysis projected that a fully subscribed CRP would raise commodity prices and reduce federal outlays by \$600 million over the period 1986 to 1990. At the same time, the AFT study projects that the CRP will increase farm income \$2.3 billion over that interval.

According to USDA estimates, average soil erosion rates on land enrolled in the CRP by the end of 1987 were reduced from about 22 tons per acre per year (a rate more than four times greater than the national cropland average) to less than 2 tons per acre per year. At the current enrollment level, the CRP will reduce cropland erosion by an estimated 460 million tons a year for 10 years. This represents a substantial improvement in the erosion reduction achieved through traditional USDA conservation programs, particularly in terms of the acreage of highly erodible land treated, and represents an appreciable reduction in overall cropland erosion.

What contributed to the fast start for the CRP in its first 18 months? Greg Larson, with the Minnesota Board of Water and Soil Resources, presented results of an informal, 10-state survey of conservation officials in which he identified four strategies that boosted enrollment:

- "Coordination of information and promotion campaigns between agencies.
- "Non-USDA agencies (for example, conservation districts and state forestry and wildlife agencies) assisting with sign-ups.
- "The use of state, local, and private (for example, wildlife group) funds to supplement annual rental payments or vegetative cover establishment.
- "Establishment of a multiagency CRP review and 'troubleshooting' group."

Larson noted that the officials he contacted pointed out a number of "positive aspects of CRP" that contributed to the program's success to date:

- "Changed landowner attitudes--marginal cropland is now viewed as a resource to retire rather than farm.
- "Provides farmers with a stable income which, in turn, helps local and state economies.
- "Enhances land-based recreational opportunities in the rural sector.
- "Erosion control, water quality, and wildlife benefits.
- "Provides an opportunity for coalition building.
- "Allows resource agencies to be proactive rather than reactive.
- "Helps stabilize declining land values."

Roger Holck, president of the Kellogg-Sully Bank & Trust in Kellogg, Iowa, described the financial appeal of the CRP for some farmers through the example of a transaction conducted by one of his customers. "The farm was purchased for \$500 per acre with a 10 percent down payment and the balance carried on contract with the seller at 8 percent interest with a full 10-year amortization.... The grand total of landownership costs is \$76,800. The 10-year total of CRP rent payments is \$76,500. In other words, CRP will totally pay for the farm in 10 years."

While the economics of the CRP have boosted interest in many areas, worries about the social and economic impacts of the program were expressed at a number of sessions, most directly and thoroughly by Marty Strange, co-director of the Center for Rural Affairs in Walthill, Nebraska. "Early indications are not favorable for those of us who believe that small- and moderate-sized, owner-operated, diversified family farms are the soundest social foundation for American agriculture." Strange listed among the "unfortunate social consequences of current conservation provisions of the 1985 Food Security Act...":

- "Tenants are muscled out of land that goes into the CRP. Despite stated intentions to protect tenants from abuse, as a practical matter...nothing USDA is willing to try has worked. Landlords have effective ways to rid themselves of tenants on land they want to put into the reserve, and to do so without offering a fair or reasonable share of the CRP payments.

- "The CRP contributes in some instances to land speculation. Where CRP payments are high relative to market rental values, they may actually put a floor under land values, stabilizing some financially weak farming operations. But this is generally only possible because the program has created conditions ideal for absentee investors who may find the CRP a good hedge against inflation or a better investment than the stock market.... The outrageously high CRP bid values on irrigated lands in some parts of Nebraska, for example, where the annual CRP payment was roughly equal to the market value of the land at the time of the bid, have produced a perverse land boom by outside investors.

- "Bid pools are so insensitive to variations within and between pools in land rental value, soil productivity, and erodibility that the CRP has a sharply differential impact on local economies with similar problems. This only pushes other land out of the reach of farmers who must pay for it from farm income."

Water Quality Concerns

Despite the impressive reductions in soil erosion reported for the CRP, it is widely recognized that soil erosion rates are far from perfect indicators of actual erosion damage. Of principal concern is the inadequacy of erosion rates--as well as the current erosion criteria for the CRP--as indicators of off-site erosion damage, particularly sediment and runoff damage that affects water bodies.

For this reason, many conference sessions brought up suggestions for refining the CRP to better focus it on surface water quality problems. Title XII authorizes the secretary of agriculture to use the CRP to deal with such problems. In January 1988, USDA announced guidelines under which limited areas of land that are not considered highly erodible under the regulatory definition, but which are in proximity to water bodies, can be enrolled in the CRP and planted to protective vegetation that allows the land to serve as filter strips. ASCS Administrator Hertz noted, "We are taking a harder look at increased targeting of the program to address water quality concerns in areas where it is practical and cost-effective to do so. Making filter strips eligible for enrollment is but one available option."

A related concern is the geographic distribution of the 23 million acres currently enrolled in the CRP. A very large share of the CRP land has qualified as a result of wind erosion. While serious, the problems are thought to be less costly to society than the damage to soil productivity and water bodies that is associated with sheet, rill, and various types of gully erosion and runoff.

Several plenary speakers and regional discussion groups noted that CRP enrollment has lagged in the Corn Belt and certain eastern states; low enrollment in the vicinity of the Chesapeake Bay has been especially disappointing to conservationists who view the CRP as a potential tool for dealing with water quality problems there. The main reason for low enrollment

relative to eligible land in these regions appears to be the CRP bid caps or "maximums." These are deemed too low by most observers, given the productivity of the land; prevailing cropland rental rates; or, in the case of the Chesapeake region, the elevated price of farmland because of nonfarm (mainly recreational) demand for waterfront property. Furthermore, average yields on land enrolled in the CRP have risen over the course of the five sign-ups, implying that higher bids or other incentives may be needed in the future to entice highly erodible land into the program.

Not Enough Trees?

Hertz hit a commonly expressed concern in stating: "We clearly are disappointed in the record so far on tree plantings. The law specifies a goal of 12.5 percent of the CRP land in trees, and less than 6 percent of the acreage has been enrolled in tree plantings in all but one sign-up. In the fifth sign-up, we placed added emphasis on encouraging tree plantings where suitable, and we will continue to do so in the future. Tree stands dramatically reduce soil erosion, benefit water quality and wildlife, and provide future sources of timber," Hertz said. "And once cropland is planted to trees, it is likely to remain out of production for long periods."

In January 1988, USDA announced the criteria for highly erodible land would be relaxed from 3T to 2T for tree plantings, following the recommendation of representatives from ASCS, SCS, the Forest Service, and Extension Service. Notwithstanding the benefits of tree plantings and the farm bill's goals in that regard, some at the conference expressed concern about the prospective rule change, noting that the CRP was intended to be focused on acute soil erosion problems, not the planting of trees per se.

Toward the 45-Million-Acre Goal: What Lies Ahead?

"A logical question is whether we think [the] CRP will achieve its 40 to 45-million-acre goal and meet the objectives envisioned for the program," Hertz said. "Our progress to date has exceeded expectations, but several factors will influence CRP participation down the road."

Hertz noted the following considerations:

- Conservation compliance: "As producers become more aware of the impact of this provision on their individual operations--especially as the 1990 start-up deadline for conservation plans approaches--we expect it will provide a strong stimulus for many to enter.... For many producers, [the] CRP will offer payments to do what they ultimately may be required to do to be in conservation compliance."

Several conference speakers noted a potential problem in the interaction of the two provisions. If the CRP is not a viable option for producers, either because rental rates are unattractive, planning is put off to the last minute, or the 25 percent county cropland limit on CRP enrollment has been reached, pressure may build to expand the CRP or delay or weaken conservation compliance.

- The 25 percent limit: "So far 59 counties, mostly in the Plains and Mountain States, have exceeded the 25 percent limit," Hertz said. Under the Food Security Act, no more than 25 percent of the cropland in any county can be enrolled in the CRP unless a waiver is granted. The measure is designed to mitigate severe economic impact on communities and agribusiness as a result of large scale land idling--a major problem in the Soil Bank program of the 1950s and 1960s. "As time goes on," Hertz said, "more and more counties...are going to find themselves hitting the acreage limitation. This was a major reason that the dual erodibility criteria were extended beyond the 1987 program year. An expansion of the acreage eligible for CRP was necessary to meet the program's 40-million-acre goal."

Bank President Holck noted that economic impacts of the CRP remain an important and sensitive issue. "One local cooperative estimates that 5,000 acres within their trade territory have been enrolled in CRP," he said. "They expect to lose crop input sales on two-thirds of the CRP acres. Translated to dollars, this means a loss in revenue of approximately \$260,000. The other side of this two-edged sword comes in the fall when there are 300,000 less bushels of grain to dry, store, and market, hopefully with a profitable margin. This loss of business very well could result in the loss of employment of one or more people."

- The financial attractiveness of the CRP: Hertz observed that a recent ASCS analysis showed that CRP enrollment rates were related to rates of return on land received by producers through the program. A large portion (58 percent) of the land enrolled enjoys a rate of return greater than 10 percent, whereas enrollment is very low in areas where the rate of return is less than 5 percent. "The analysis suggests we could have trouble reaching the 40-million acre goal," Hertz stated. "We are running short of eligible land where [the] CRP offers high rates of return."

Greg Larson's 10-state survey of conservation officials uncovered other problems that may well affect future CRP performance and enrollment.

- "Bid level and pool area structure is sometimes hindering enrollment.
- "Competition exists between the feed grain program and CRP.
- "Farmers with meadow/hay based rotations are often ineligible.
- "[CRP] bid levels are setting a cash rental 'floor,' thus increasing costs for non-participants.

- "Inconsistency between CRP land eligibility and highly erodible land criteria has, in some states, created a loophole whereby land is eligible for CRP but is not highly erodible land [under conservation compliance and sodbuster]. Consequently, farmers enroll large acreages in CRP then clear additional land to farm without sodbuster penalties.

- "Uncertainty that USDA will 'hold the line' on CRP requirements."

On this last point, Larson offered a recommendation that summed up concerns expressed at many points during the conference. "USDA should issue clear, consistent, and timely messages that CRP (and other Food Security Act) requirements as established in final rules will not be relaxed," he said. "This will be particularly important if commodity prices increase significantly before the expiration of CRP contracts."

Larson also noted a need for state and local programs and for expanded staffing to complement the federal CRP: "State and local governments can do much to complement the Conservation Reserve Program. One such example exists in Minnesota. A state-funded conservation reserve program called RIM (Reinvest in Minnesota) complements CRP by offering landowners lump sum payments for 20-year or perpetual conservation easements.... Although Minnesota has over 1.5 million acres in CRP and a greater percentage of eligible cropland (65 percent) in CRP than any other state, landowners still enrolled over 20,000 acres of marginal cropland in the 1986-1987 RIM program."

Several speakers alluded to proposals, such as legislation introduced in 1987 by Senator Sam Nunn and others, for expanding the CRP beyond the 40 to 45-million-acre statutory goal. The APT analysis discussed earlier examined a CRP expansion to 60 million acres and projected further government cost reductions (\$1.2 billion annually) vis a vis the annual commodity programs. AFT's Grossi noted, as did many other conference participants, that the Food Security Act provides for a change in the funding mechanism for the CRP in the 1988 fiscal year, from Commodity Credit Corporation reimbursement to annual appropriation. This change may introduce uncertainty about funding for future enrollments, whether the acreage goal is expanded or not. Many conference participants noted that this type of uncertainty might compromise farmer confidence in the CRP and other conservation provisions.

Considerable concern also was expressed about the fate of CRP acres following expiration of the 10-year contracts.

Chapter 3

Sodbuster and Conservation Compliance

In putting together the 1985 farm bill, this country made a choice. It was a choice between consistency and inconsistency in commodity and conservation programs. We chose consistency. It was the right choice.

Wilson Scaling, Chief
Soil Conservation Service

The sodbuster policy originated in concerns by farmers and ranchers in Weld County, Colorado, over the conversion of fragile rangeland to cropland use, particularly by farm owners and operators who lived outside the county and who were able to subsidize this improper land use with the benefits of USDA commodity programs. First proposed by Senator William Armstrong of Colorado, sodbuster sought to deny a broad range of USDA program benefits to farmers who improperly cultivate highly erodible land, exacerbating both soil erosion and commodity supply problems. The proposal was debated for years in the U.S. Senate and became progressively stronger as it neared final passage in Title XII of the Food Security Act.

"Conservation compliance," first proposed by the conservation coalition (a group of national conservation and environmental organizations) in early 1985, is technically a subprovision of sodbuster, but in scope and potential impact it is far more significant. Sodbuster, which came into effect in mid-1986, applies to highly erodible land, except land that was not cultivated during the "grandfather" period--crop years between 1980 and 1985. Under conservation compliance, that "grandfather" dies at the end of 1989. Thereafter, sodbuster applies to any highly erodible land, regardless of its cropping history. Producers must have a plan in place for such land by the end of 1989; they have a "grace period" from the beginning of 1990 to the end of 1994, during which they must implement their locally approved conservation plan according to the plan's schedule in order to remain eligible for most USDA programs.

As mentioned in the introduction to this paper, under USDA regulations sodbuster applies to an estimated 227 million acres of highly erodible land. In any one year, only a few million such acres are expected to be brought into commodity production, particularly when commodity prices are weak. Still, the conversions must comply with a locally approved conservation plan if the producer wishes to remain eligible that year for commodity, Farmers Home Administration (FmHA), and other USDA programs.

Conservation compliance applies, under USDA rules, to an estimated 118 million acres of highly erodible cropland that were cultivated at least once during the 1980 to 1985 crop years. (Another 47 million acres, largely not highly erodible, are also encompassed by the provision because it applies to any field that is at least one-third highly erodible land.)

Sodbuster, conservation compliance, and the Conservation Reserve Program were designed by Congress to complement one another. The chief interaction, of course, is between the CRP and conservation compliance. Under existing rules, they apply to similar though not identical land. Incongruities between definitions of land eligible for the CRP and subject to compliance was, in fact, a recurring theme and concern expressed during the Kansas City conference. The CRP is considered a transition program, a means to encourage farmers to convert highly erodible land unsuitable for cropping to more sustainable uses. Conservation compliance is intended to phase out the improper use of such land by requiring conservation in return for program eligibility. As the preceding chapter discussed, both the Congress and USDA envision the CRP

as a workable option for responding to conservation compliance, in particular for farmers whose cropland erosion problems are severe and costly to remedy under a regime of program crops. Whether the two provisions will mesh as intended in application was a major issue during the conference, for reasons discussed earlier.

Wilson Scalling, chief of SCS and conference keynote speaker on sodbuster and conservation compliance, characterized the policies in terms of the choices they present. "Perhaps most important," he said, "are choices for the producer:

- "Making an effort to understand the provisions, or ignoring the whole issue--that's a producer's choice.

- "Participation or nonparticipation in USDA programs is the producer's choice.

- "There's the choice of applying for a plan...or waiting until it's too late to meet the December 31 deadline in 1989.

- "A choice of conservation systems."

Considerable Heartburn: How Much Erosion Reduction?

The central regulatory question that remained undecided at the time of the Kansas City conference has since been officially resolved: the question of how to determine the amount of erosion reduction a farmer will have to achieve in order to comply with sodbuster and conservation compliance. This decision has profound implications for the performance of these policies, field procedures, and the perception of the policies by farmers.

Under its initial interim rule, USDA required erosion reduction to T-value levels, with a waiver to 2T in circumstances where the cost of attaining a greater erosion reduction was impractical or would impose an economic hardship on the producer. Subsequently, USDA proposed an interim rule that eliminated reference to T in implementing sodbuster and conservation compliance, substituting "alternative conservation systems" approved in the local field office technical guide.

"We're still working under an interim rule concerning the criteria for level of erosion reduction," Chief Scalling told the conference. "We've had to debate whether or not alternative conservation systems allowed in SCS field office technical guides should be permissible criteria for conservation plans on existing cropland and on sodbusted land. We experienced considerable heartburn over the issue of allowing 'alternative' conservation systems in field office technical guides," he added. "This issue received considerable public comment.

"We had two choices:

- "Use a rigid national standard and in doing so stretch our erosion formulas to, and perhaps beyond, the scientifically defensible limits.

- "The second choice was to use a more flexible approach based on alternative conservation systems.

"We chose to allow the alternative systems."

Chief Scalling specified a number of tenets in the department's "basic philosophy" regarding the rule change:

- "We want to develop conservation systems that are economically and technically feasible and socially acceptable.

- "We want to achieve significant reduction in erosion without imposing unreasonable economic costs on producers or on the taxpayers.

- "But I want to make it very clear that we do not intend to compromise our technical standards. The conservation systems included in the SCS technical guides will consist of high-quality practices.

- "What we do intend is to trust the seasoned judgment of SCS state conservationists and their experienced field people, with input from local conservation districts and others."

Myrl Mitchell, president of the Plains Cotton Growers in Lubbock, Texas,

agreed wholeheartedly with USDA's decision. Describing a Texas A&M University analysis of conservation compliance, Mitchell said that "the study concluded that the imposition of stringent conservation regulations, such as those based on rigid T values as first proposed, could sound the death knell for agricultural production in 11 of our southern counties, reduce production from between one-third to two-thirds in another seven, and result in forced changes in cropping patterns that would cause significant economic losses in the other seven counties. Further, according to A&M, the effect on gins, oil mills, warehouses, banks, implement dealers, chemical and other suppliers of the agricultural industry would be devastating."

Mitchell, in describing farmers' initial reaction to the proposed regulations, remarked, "We were scared!" He said that producers were, in his opinion, willing to practice land stewardship in return for farm program benefits "...If we are allowed to do so on an economically sound basis. Some of our producers may still need convincing, but with the penalty for failure to adopt conservation plans being what it is, you can be sure that won't take long.... Happily, we aren't as scared now as we were in the beginning. We're finding that most in the Soil Conservation Service are willing to listen to our side of the story."

The issue was frequently discussed during the conference, and opinions differed sharply. The most direct consideration of the matter arose in a session devoted to the criteria used to define highly erodible land.

"The crux of the issue is this," Charles Benbrook, executive director of the National Research Council's Board on Agriculture remarked. "Will conservation compliance work and remain politically viable if it is implemented at the local level by 10,000 or so individuals, following a set of imprecise, nonquantitative guidelines on how local SCS personnel should interpret what is 'reasonable' to expect from farmers based on the content of technical guides?"

"Technical guides vary greatly by age and specificity. Many do not include much data on certain practices. They often lack essential USLE [universal soil loss equation] information. The discussion and data on the costs of adopting practices is often outdated and rarely complete...."

Benbrook continued: "Even with the nation's very best technical guides, it will always be difficult to go from conservation practice/soil type information in the technical guides to judgements as to the 'reasonableness' of the costs associated with a particular conservation system on a particular farm. Farmers are likely to have opinions about this, and are likely to express them vigorously. Above all, farmers (and regional or crop-specific commodity organizations) do not like being treated unfairly."

Bob Warrick, a Nebraska farmer and a leader in the Sierra Club's efforts to enact Title XII, strongly opposed USDA's decision, seeing it as "a total cop-out on the whole compliance section.... I am hoping that the T [value standard] will be maintained, mainly because I feel that SCS offices do not have the political muscle to resist the pressure farmers will place on them when being asked to relax the T standard and be allowed to go to as much as 5 T. Allowing 5 T is not conservation; on the contrary, it's blackmail, and is a drastic weakening of the whole conservation section."

Mack Gray, with SCS in Washington, D.C., defended USDA's choice of technical guides. "I believe there are technical problems associated with trying to administer a T-based standard. Don't get me wrong, I will not stand up here and talk down the universal soil loss equation and the wind erosion equation. They're darn good tools. I don't know where we'd be today if we didn't have them...[but] there is no way that you or I, or anybody else could take a group of people out and measure the wind erosion or water erosion that's occurring [at a particular site] and tell anybody that we were very precise. If we measure 10 tons per acre, it may be anywhere from 5 to 15 tons, and it may be anywhere from 3 to 18 tons, we don't know. Do we, therefore, set a standard of 5 or 10 tons, and if you set a standard, are you going to cut off [benefits]

on that standard? If you set a standard of 5 tons and a producer gets to 6 tons, are you going to tell him he can't participate in a program...?"

Gray added: "I think everybody ought to share [a] concern that this act be administered in such a way that it accomplishes something. I think the intent of Congress was to achieve a significant erosion reduction. I just happen to believe that if we set up a process for local input into a set of alternatives that farmers can carry out, our technical people, working with farmers, local soil and water conservation district supervisors, ASCS committees, commodity groups, environmental groups, and private citizens, can come to a consensus about what's reasonable to expect [of farmers] that can go into the technical guide. Then the producer can choose.... But if they don't feel like it's being implemented in such a way that is fair, in such a way that it does not destroy their ability to make a living, there are not enough people in SCS, ASCS, FmHA, EPA [Environmental Protection Agency], or anywhere else to police it."

Myrl Mitchell colorfully summed up the views of cotton producers in this manner. "Somewhere I heard a story about the difference between a contribution and a commitment. Sorry I don't remember the details, but it was something about the hen and the pig that supply us our bacon and eggs at breakfast. The eggs from the hen are a reasonable contribution; the bacon from the pig is total commitment.... We as farmers are willing to make a contribution to conservation, but it is unreasonable to expect that we will willingly commit ourselves to oblivion."

In the final rule, USDA proposed different erosion reduction rules for sodbuster and conservation compliance. For sodbuster infractions affecting native vegetation, either grass or trees, a T value standard is required of conservation plans. For conservation compliance, USDA retained the essence of the interim rule--use of alternative conservation systems as set forth in field office technical guides.

The Workload: Some Initial Shock

Deputy Secretary Peter Myers' statement to the conference contained a rather stunning statistic about workload related to conservation compliance: "We estimate most farmers producing on highly erodible land will want to develop conservation plans so they can remain eligible for USDA program benefits. That must be done by the end of 1989, and the plan [must be] fully implemented by the end of 1994. We estimate that 800,000 conservation plans may be developed over the next two years."

Apropos of that daunting assignment, Chief Scaling observed, in what may have been an understatement, "There was some initial shock among our field staff when the first workload estimates were made. But we're coming out of that now. Especially in the states with the heaviest workloads, our choice was clear: redirect our efforts to the farm bill...and get to work!"

Ray Ledgerwood, eastern field representative for the Washington State Conservation Commission, provided a state and local perspective on the workload issue. "Washington State has a tremendous planning workload to address its estimated 4.9 million acres of highly erodible land," Ledgerwood said. "The workload is projected at 450 staff years. By redirecting existing Soil Conservation Service staff, granting overtime, projecting conservation district employees time and available volunteer help, a shortfall of 53 staff years is still expected. These figures are relatively small in comparison to the 18 states with even higher planning workloads." One consequence, he noted, is that other programs are suffering. "Programs in range, forestry, water quality, stream corridor protection, [and] urban related projects are being set back in some areas because of SCS policy to work primarily on these conservation provisions. Many conservation districts are having to reassess their local priorities, not because of changes in their districts' natural resource problems, but because of changes in staffing." Ledgerwood also pointed out,

however, that the workloads were inspiring greater efficiency in field offices and greater interagency cooperation at all levels--a common theme of the conference.

How Soon Will These Provisions Go Away?

Another common theme was the widely reported skepticism among farmers that the "sticks" in the 1985 Food Security Act--sodbuster, conservation compliance, and swampbuster--would remain in law or be rigorously wielded by USDA.

"We know the skeptics are raising questions like, how soon will these provisions go away?" Deputy Secretary Myers said in his statement. "If enough people hold off getting a conservation plan, will Congress extend the deadline? Will the standards change? Will they get more strict? Or will they loosen up?"

Warrick put it this way: "The time is fast approaching whereby plans must be finished...and then in five years conservation practices must be in place. We are having farmers come into SCS offices that have never been into one before. Conversely, a large number of farmers are never going to go into an SCS office because they believe on the last day the rules will change and they will never have to put conservation on their farms, but still [remain eligible] for federal subsidies. I hope they are wrong!"

Ledgerwood noted similar problems in Washington State: "It is safe to say at this point that only the minority of producers have a good working knowledge of these conservation provisions and how they are impacted by this legislation. One indication of how well local producers are informed is the number of sign-ups for conservation plans in the local field office. In Whitman County, 250 producers have signed up for the conservation planning activity. This represents 16 percent of the 1,600 producers who have highly erodible land in the county. Many of the producers have developed a wait-and-see attitude, probably due to the fluctuations, constant changes, and temporary nature of past farm bills."

Chief Scaling stated, "To date, we have completed about 40 percent of the technical determinations of erodibility. Conservation planning has been completed on about 20 percent of the highly erodible land subject to the farm bill.... Our nationwide goal for 1988 is to complete 90 percent of the highly erodible land determinations and 65 percent of the planning."

Chapter 4

Swampbuster

Public concern for environmental values has recently required a re-evaluation of our attitudes toward wetlands--those soggy frontiers between land and water where wildlife find a home and our fisheries are nurtured.

Gary A. Margheim
Soil Conservation Service

Subtitle C in Title XII of the 1985 Food Security Act makes producers ineligible for most USDA programs if they convert wetland areas (after December 23, 1985) for use in the production of agricultural commodities. Commonly known as "swampbuster," this policy is intended to serve much the same purposes for wetland conservation that sodbuster is intended to serve for soil conservation: to prevent federal farm program benefits from subsidizing conversion of a fragile resource to cropland use. Unlike sodbuster, producers cannot avoid swampbuster sanctions by following a locally approved conservation plan. Soil erosion can be kept in reasonable check on many fragile soils if adequate conservation systems are put in place. In the case of wetlands, however, drainage and other alterations required to prepare the land for crop production generally eliminate most or all of the benefits of natural wetlands. Conservation plans simply cannot mitigate the results of wetland alterations.

As Gary Margheim, director of the Land Treatment Program Division of SCS, stated at the Kansas City conference, swampbuster grew out of new public appreciation for wetlands. "Public concern for environmental values has recently required a re-evaluation of our attitudes toward wetlands--those soggy frontiers between land and water where wildlife find a home and our fisheries are nurtured," Margheim said. "The more traditional view of wetlands as latent resources awaiting reclamation to more 'useful' purposes was in direct conflict with this growing concern." So were farm program payments that actually encouraged wetland conversion, particularly during times of large commodity surpluses and record farm subsidies.

"According to the 1982 National Resources Inventory, about 5.2 million of the nation's 76 million acres of wetlands have a medium to high potential for conversion to cropland," Margheim pointed out. "These lands have the highest probability of being affected by swampbuster."

Final rules for implementing swampbuster were published in the *Federal Register* on September 17, 1987, culminating over a year of work by USDA, including analysis of about 8,400 public comments submitted on the interim rule published in June 1986. Of all the Title XII provisions, swampbuster has generated the most controversy to date, especially in North Dakota, where farmers have reacted strongly to both the policy and its implementation in the prairie pothole region.

Some Important Technical Issues

Margheim reported that field experience gained during implementation of the interim rule, including pilot testing of the rule in six states (Illinois, Nebraska, California, Maryland, North Dakota, and Mississippi) revealed "the need for additional training of field personnel in wetland identification." That point was emphasized many times during the conference. David Risley, assistant administrator, and Michael Budzik, district manager, both with the Ohio Department of Natural Resources Division of Wildlife, stated that "wetland

identification will continue to be a problem without an obvious solution. The Soil Conservation Service simply does not have enough personnel to adequately service wetland identification."

USDA's early experience with swampbuster also showed, Margheim observed, that FWS [Fish and Wildlife Service] Wetland Inventory maps and soil surveys "are useful as tools for wetland identification...[and] a significant number of wetland determinations could be made in the [local] office." Margheim also noted that USDA had found "inconsistencies in the interpretation of wetland and converted wetland" among states and even within smaller geographic areas.

Most of the thousands of public comments on the interim rule focused on five or six issues, which Margheim reviewed in his presentation. In light of the special importance these technical matters have attained in the implementation of swampbuster and the controversy surrounding this policy, a summary of Margheim's observations about the final rule follows:

Commenced: This issue--When did the alteration of the wetland begin?--received 883 public comments. Under the final rule, "commencement was based on one or more of the following criteria: (a) the conversion activity actually started before December 23, 1985, or (b) the person expended or committed substantial funds by entering into a contract before December 23, 1985, for the conversion activity or for construction materials and supplies directly related to the conversion." Persons who want a commencement determination made on their farm must request it by September 19, 1988, and "demonstrate that the wetland conversion has been actively pursued and will be completed by January 1, 1995."

Minimal Effect: Some 774 comments were received on this aspect of the interim rule. Under the law and regulations, a farming activity does not trigger swampbuster penalties if it has been determined that the activity will have minimal effect on wetland characteristics or values. "The final rule maintains the SCS environmental evaluation process as the mechanism for determining minimal effect...[and] precludes further alteration of converted wetlands which were subject to a minimal effects determination unless subsequent alterations are also determined to have minimal effect."

Ineligibility: Seven hundred identical comments addressed the swampbuster penalty of ineligibility for most USDA programs. All of the comments proposed that penalties should apply only on the farms on which the violation occurred and not on other land or leaseholdings. But the act and the final rule retain broad application of penalties. Furthermore, "activities of a water resource district, drainage district, or similar entity will be attributed to all persons within the district's jurisdiction," as Margheim noted. "If a person's wetlands are converted due to district actions,...the person is considered to have caused or permitted the conversion. Production of an agricultural commodity on this converted wetland would result in loss of certain USDA program benefits."

Converted Wetland: The question of which wetlands are considered "converted" as of December 23, 1985--and therefore are exempted from swampbuster--drew 700 comments. Margheim noted that "potholes, playas, and depressions that are flooded and ponded for extended periods shall not be considered previously converted wetlands despite manipulations prior to December 23, 1985 if the area continues to meet the wetland criteria. Persons may continue to farm wetlands in the same manner they did prior to December 23, 1985," Margheim stated. "However, actions cannot be taken which affect the water regime [of the wetland] beyond that which existed on or before December 23, 1985."

Maintenance and Improvement: Existing drainage systems can be maintained under swampbuster, but according to Margheim "the final rule expressly precludes bringing new, additional wetland acreage into production through "maintenance and improvement".... Additional wetlands include wetlands and converted wetlands that have reverted as a result of abandonment of crop production and management or maintenance operations." Some 700 comments addressed this matter.

Third Party: The final rule restricted the circumstances under which a farmer could be exempted from swampbuster wetlands he farmed were converted through the actions of a third party, such as a drainage district or a neighbor. "The responsibility has been placed on the farmer seeking the benefits to show that the drainage was not part of a 'scheme or device' to avoid compliance," Margheim said.

Will Swampbuster Go Away?

As the first Title XII provision to generate controversy, the swampbuster policy provides a useful example of how implementation of the conservation provisions in the Food Security Act may generally apply. A number of conference speakers alluded to skepticism among farmers about the seriousness of congressional intent in passing swampbuster and about the rigor with which USDA will enforce the policy.

"Unfortunately, I do have some concern about the sincerity of typically production-oriented county offices making natural resource decisions," noted Risley and Budzik. One of the authors had "personally heard county ASCS personnel tell farmers that they did not think the conservation requirements would be fully implemented by 1990. Given the erratic track record of federal farm policy, many feel that these issues will 'blow over' in the next farm bill."

According to Risley and Budzik, "Overexuberance [about] the value of swampbuster must be tempered by reflections of 10 years of [experience with] Executive Order 11990, entitled 'Protection of Wetlands,' signed in 1977 by President Carter. [The Order states that] 'each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands.' It sure looked good on paper but wetlands converted in 1977 were probably receiving payments to lay idle in 1987. This Executive Order did little to slow down swampbusting in the name of production."

Risley and Budzik concluded that "swampbuster will work if:

- "USDA officials continue to stress the importance of swampbuster to their staff all the way from Washington to the field offices. Swampbuster violations at any level cannot be ignored.
- "USDA should welcome the help of outside interests in enforcing swampbuster and maintain formal procedures for investigating reported violations."

In a similar vein, Margheim pointed out, "Farmers must realize that swampbuster is law and will affect their future operations if they want to maintain eligibility for USDA program benefits. The general public must realize that changes in that giant manufacturing plant we call agriculture come slowly and primarily through voluntary actions on the part of the landowner or operator."

Chapter 5

FmHA Conservation Easements

Wildlife biologists and FmHA administrators simply do not speak the same language.

David L. Risley and Michael J. Budzik
Ohio Department of Natural Resources

"The Farmers Home Administration [FmHA] was given two, rather unique assignments under the conservation category by the 1985 Food Security Act," FmHA Administrator Vance Clark explained at the Kansas City conference. "Both involve easements for conservation purposes, one relating to farm property that we own, or will own, as we take into inventory farm land from FmHA borrowers, and the other dealing with property owned by our borrowers who need to have their farm debt restructured so that they may yet remain in business."

According to Duane Sand, resourceful farming project director for the Iowa Natural Heritage Foundation, "Easements are an important conservation tool because they allow societies to permanently prohibit certain unacceptable land uses, or to permanently require certain improvements in the public interest. Easements are a dependable and politically acceptable conservation tool because property buyers know the limits of the land and do not have to pay for property rights which should never be used." Sand noted that some 1.8 million acres are protected by conservation easements in the United States, most of them held by the U.S. Department of the Interior, and very little by USDA. Speaking of the two FmHA conservation easement provisions in the 1985 Food Security Act, Sand told the Kansas City conference that "while these provisions will never touch as many acres as the better known conservation provisions of that act, if used they can offer special protection to thousands of acres. More importantly, they can introduce the USDA to one of the most politically acceptable and economical conservation tools available."

Although FmHA had, by the time of the conference, approved only a few easement transactions, and despite some daunting obstacles to significant use of easements by the agency, speakers generally saw promise in these new conservation tools--and strong arguments for using them. "Conservation easements will work if we try," predicted David Risley, assistant administrator, and Michael Budzik, district manager, of the Ohio Department of Natural Resources Division of Wildlife. "The costs and overall benefits to the taxpayer will show that easements can define the highest and best use for many of these marginal farms. Why should one agency within USDA sell a highly erodible farm with a high corn base," they argued in their Kansas City presentation, "then a second USDA agency make crop subsidy payments, while a third spends precious staff hours convincing the new owner to control erosion. It just doesn't make sense."

Section 1314 Inventory Easements

FmHA inventory easements, authorized under Section 1314 of the act, allow FmHA to convey easements or rights-of-way for a variety of conservation purposes or land use types, including, according to Administrator Clark, but not limited to:

- "fish and wildlife habitats of local, regional or state importance;
- "floodplain and wetland areas;
- "highly erodible land as defined by the Soil Conservation Service;
- "important farmland, prime forestland, or prime rangeland as defined in the USDA land use policy regulation (9500-3);

- "aquifer recharge areas of local, regional, or state importance;
- "areas of high water quality or scenic values;
- "historic and cultural properties."

Clark pointed out that "conveyances can include easements, development rights, and restrictions. They can be made to local or state governments or private nonprofit organizations. Normally, the agency would expect reimbursement for the easement. If an easement is requested without reimbursement and it would adversely affect the value of the property, the government would closely review it before deciding to grant an easement. Under an interagency agreement, Fish and Wildlife Service personnel are assisting FmHA in identifying inventory properties eligible for the program."

Only a few easements and deed restrictions have been approved by FmHA thus far, according to Sand, who saw four obstacles to broad use of Section 1314: "The first obstacle is in identifying a convenient way to select inventory properties in need of easements. Each FmHA state office needs to obtain aerial photos and property descriptions, so that organizations familiar with easements can attempt to protect lands in that state. Second, where more than one organization or agency is interested in easements, it is essential for conservationists to coordinate their efforts and select a lead agency for each property in need of protection.... Third, in each state some additional training is probably needed for FmHA personnel and conservation professionals to understand the opportunities allowed under the law. And fourth, where deed restrictions are used rather than detailed conservation easements, there can be some question about who is responsible for monitoring and enforcing restrictions."

Risley and Buzdik see fundamental problems with the 1314 provisions. "It appears that many provisions of 1314 are in direct conflict with FmHA policy," they said in their Kansas City speech. "FmHA is directed to sell inventory property as quickly as possible, but since easements or restrictions will slow that process there is little incentive for the [local] FmHA administrator to pursue an easement even in critical habitat areas. Since they function very similarly to a bank institution, they feel that they must sell a particular property to recover as much of their money as possible from bad loans on poor properties that never should have been in production anyway. Conservation has never been an issue with FmHA so it is difficult to some in that agency to see the value of easements granted to another government agency."

Risley and Buzdik added: "For this provision to work, the rules of the game and the intent of the legislation need to be better defined. A conservation easement will almost always reduce the value of a property. Is FmHA expected to accept a loss or is the wildlife or other conservation organization expected to pay this [cost]? Who is going to determine the value of the wildlife habitat preserved or created by an easement. [We] feel that there is great public value in providing wildlife habitat but [our] colleagues in FmHA may feel differently. If organizations are expected to pay for each reduction then very few easements will be consummated. Conservation agencies and organizations have very few dollars available for buying easements so most of these must be granted."

Risley and Buzdik had two recommendations pertaining to the Section 1314 easements. "Easements should be granted to state or federal wildlife agencies or other qualifying groups on all inventory lands with wetlands. Any inventory farm that cannot adequately meet SCS technical guide specs with common local rotations or structural practices should not be sold without a conservation easement."

Section 1318 Debt Easements

"The Food Security Act provides that we at FmHA may consider--in the case of a farmer unable to keep up his payments to us--accepting an easement in

exchange for canceling a portion of the debt equal to the value of the easement," Administrator Clark explained in his Kansas City talk. "His property can be wetland, environmental-sensitive land, or highly erodible land, and the easement possibilities include conservation, recreational, or wildlife purposes." In order to be eligible, the loan must have been closed before passage of the Food Security Act, the land (except wetland) must have been cropped for the three years preceding passage of the act, and the easement must be in effect for a minimum of 50 years. Finally, as Clark noted, "the easement-debt restructuring matchup must result in the borrower being brought current in loan payments--not paying off the entire debt, but [bringing the borrower] current in scheduled payments." Personnel from SCS, the Forest Service, and the Fish and Wildlife Service will advise FmHA on specific transactions once a borrower has expressed interest in the easement-debt restructuring.

Final rules have yet to be published for Section 1318 easement-debt restructuring. As Sand noted, "the proposed rules had broad conservation objectives and favorable interpretations of the authority granted.... Hopefully, Farmers Home Administration will take an enlightened attitude and publicize this debt restructuring option along with other restructuring options." Sand added, "Again, training of FmHA field personnel [and in this case SCS personnel also] will be needed to identify where and how these provisions can best be used."

Chapter 6

Conservation Planning and Education

*Now we are in the spotlight...and many eyes are focused on us.
We have the opportunity to prove that we can get the job done.*

Clarence Durban, President
National Association of Conservation Districts

Conservation plans and educational activities have long been the major tools of the soil conservation movement, but they have never been as important as they are in the wake of the 1985 farm bill. "The Food Security Act of 1985 for the first time included plans as a part of federal legislation," observed SCS Director of Conservation Planning Sherman Lewis in Kansas City. "Conservation plans are intended to be the vehicle by which conservation assistance is documented." But in order for the planning process to succeed, farmers need to be educated about the requirements of Title XII, the applicability of its various provisions to their farm, and the range of options available for complying with the law. Given USDA's estimate that as many as 80 percent of all American farmers could be affected to some degree by one or another of the Title XII provisions, a truly gargantuan educational task faces SCS, the Extension Service, conservation districts, and others in the public and private sectors. This is particularly true given the deadlines specified in the act for conservation compliance, the provision that will place the heaviest workload on USDA over the next two years.

The Kansas City conference revealed a great deal of concern about the farm bill workload compared with available staff resources and, thus, about the ability of USDA to carry out conservation planning and educational responsibilities, notwithstanding the department's official position that it can get the job done on time, given cooperation from farmers and others involved in farm bill implementation. It was also evident that many innovations in planning and education, designed to improve administrative efficiency and reach the enormous number of farmers affected by the act, have been developed by SCS offices, conservation districts, state conservation agencies, and others.

The Changing Nature of Conservation Planning

Lewis pointed out in Kansas City that there have been many changes in the nature of conservation planning over the past 50 years: "Previously, most conservation planning was done with farmers or ranchers who owned and operated their farms. Their plans were generally for the long-term conservation and improvement of their soil and water resources. They were interested in maintaining their farms in good condition to pass them along to the next generation. The conservation practices they installed were often structural ones, such as terraces and waterways, that required a large initial investment and little maintenance, and could be expected to last for many years. However, there is a trend now toward one operator farming any number of farms, owned by many different people. These operators, because of the often short-term, often oral rental agreements, do not have a long planning horizon. They must work toward conserving the soil with conservation practices that are low-cost, probably installed (or used) annually, and which require little maintenance."

Conservation tillage is a prime example. Lewis observed that farmers in general have a higher degree of understanding of conservation planning as a result of either formal education or information gleaned from farm publications or through farmer organizations.

Title XII has placed new and massive demands on the conservation planning process. For one thing, planning activities are now focused on specific fields containing highly erodible cropland. As noted earlier, some 800,000 plans may be required in nationwide implementation of conservation compliance, according to USDA estimates. "We expect that we will be helping...many farmers with whom we have had little or no previous contact," Lewis said.

Several innovations have been introduced to cope with the planning workload. Group planning essentially replicates with groups of farmers the planning process used for individual producers. "SCS and the Cooperative Extension Service in Illinois are developing a formal version of a group planning process which will be made available to each state for use in working with groups of farmers," Lewis said. "One of the significant aspects of this process is that farmers will be able to do some of the mapwork and conservation plan development with limited assistance from the Soil Conservation Service." Another technique, Lewis stated, is "the use of more generic crop sequences in conservation plans. Rather than naming a specific crop to be grown each year, the crop sequence can simply identify the percent or sequence of high residue and low residue crops.... Also, by focusing only on the highly erodible fields, it is necessary only to have the farmer consider the conservation systems that reduce the erosion problem rather than the conservation practices needed to solve all of his soil and water resource problems on the farm." Computers are in wide use within SCS to expedite the recording and printing of conservation plans.

Clarence Durban, president of the National Association of Conservation Districts, said that "with the many changes that are occurring in the way we carry out our responsibilities, districts are keeping a keen eye on the quality of the work being done under the farm bill programs.... There may be pressure to produce in quantity, but part of the district role must be to ensure that the conservation plans developed continue to reflect the high standards we have set for ourselves. While the group planning meetings...are a good example of how districts are responding to the increased workload, we must at the same time take pains not to sacrifice the quality in these conservation plans in order to achieve the quantity we desire."

Leroy Holtsclaw, area conservationist for SCS in Rock Falls, Illinois, pointed out that Food Security Act activities in his state were preceded by conservation planning initiated under a program called "T by 2000." Workload estimates for that program, like the Food Security Act programs, lead to innovations in planning and priority setting, including group planning exercises with farmers within hydrologic units. "The method involves gathering soils information (in some cases making soil map transparencies the same size as the ASCS maps) for each farm," Holtsclaw explained. "The soil information is organized into similar treatment groups based on average slope length and steepness. A number of conservation cropping systems that include crop rotations and tillage alternatives suitable for soils and acceptable to producers...are arranged as alternatives for resource management systems on cropland. One of the systems for highly erodible land is permanent cover that can be installed under the CRP. These systems are listed on separate sheets of paper in a packet and the practices to save soil intensify from the first page to the last. The decision-maker only has to flip through the pamphlet and find a set of practices that will achieve acceptable levels of soil loss as identified in the field office technical guide. The first meeting involved a group of about 30 to 50 farmers and the complete process was explained. The second meeting that followed about one week later involved from one to five people so the plans could be more specific to the farm. The goal of this meeting was the signing of the plan if possible. The time that a farmer took to complete a plan was reported as ranging from four to eight hours."

Notwithstanding such promising innovations, the Food Security Act workload was a major concern during the conference. "Perhaps the greatest single

impediment, and often the most frustrating aspect of the farm bill, is the lack of resources to address the programs adequately," said Durban. Others worried about the impact of the act's workload on other conservation programs. "The institutional framework and capability that has been built over 50 years can be dismantled rapidly...If USDA allows the very thin layer of soil conservation programs to be completely moved out in many areas," stated Gale Martin of the Mississippi Soil and Water Conservation Commission.

Education: Demand Versus Supply

The Cooperative Extension Service is the lead agency for information and education activities pursuant to the 1985 Food Security Act, and at the Kansas City conference its administrator, Myron Johnsrud, described a number of initiatives undertaken since enactment. "There have been some hesitations in our education effort," he acknowledged, "caused in large part by the dilemma of moving ahead with an education program before all the rules were finalized." Johnsrud stated that USDA has an Information and Education Task Force for Title XII. "The six USDA agencies involved in the act diverted a total of nearly \$500,000 from their 1987 funds toward the task force's budget. The task force's primary objective is to assist the state and county offices of the USDA agencies as they create and distribute farm bill information. Many information and education items--fact sheets, brochures, radio and television scripts, posters, displays, videos, and slide sets--have been developed and distributed."

But Peter Nowak, soil and water conservation specialist at the University of Wisconsin-Madison, stated that "information and education surrounding the conservation provisions in the 1985 FSA [Food Security Act] appear to have a low priority. That is not to say that information and education activities have not generated a lot of rhetoric about their importance. We do a very good job at talking about the need for information activities." But according to Nowak, "there has been little or no increase in fiscal support for information and education activities at the state or county level...[and] there is little consensus about who will inform whom about what." Overall, Nowak concluded, "Too much effort has been spent debating the nature of these provisions, while too little attention has been paid to actually implementing them." He proposed three types of information demands that required a better information supply:

1. "Information on the applicability of the conservation provisions: Efforts are being made to inform all land users regardless of the applicability of the FSA [Food Security Act] provisions.... A more effective approach would be to focus our limited...resources on just those land users who have land eligible for the various FSA provisions.... In parts of some states or districts, local personnel have targeted their efforts based on levels of resource degradation.... In these limited situations, informing land users on the applicability of the FSA provisions has been very successful.

2. "Coordinating access to conservation assistance: Extension is finding difficulty in shifting from an emphasis on production to one where conservation considerations are integrated.... There is a general lack of integration of federal FSA requirements into state and local conservation programs.... There appears to be some confusion as to which USDA agency is in the best position to create and distribute educational materials....

3. "Design of production systems that are compatible with conservation provisions: There is little evidence that this type of information has played a major role in past conservation education activities. Idealistic stewardship messages have been the norm.... Ignorance of accurate facts on the economics of conservation practices is creating a situation where the FSA provisions are being viewed as an unjust economic burden by many land users."

Chapter 7

Regional Perspectives

While the provisions of Title XII in the Food Security Act are national in scope, their impact differs markedly among geographic regions. The Kansas City conference featured several discussion sessions the purpose of which was to collect regional assessments of the Food Security Act's new conservation policies and programs. A report on these discussions was presented at a plenary session near the end of the conference.

The regional discussions were lively and well-attended. Participants in the seven regional groups were asked to organize their comments around a series of such questions: What is working? What is not? Some of the common themes that emerged in at least two groups in response to these questions are presented below. Much of the value of the regional meetings derives from the specific problems identified and the recommendations offered. Those sections of each regional report are summarized below.

It is worth noting that these were rather large discussion groups--mini-conferences unto themselves--and while discussion leaders tried to reach a measure of consensus on issues, formal votes were impractical. Furthermore, the regions under which discussion groups were organized are vast, and by no means are they homogenous with respect to the scope or impact of Title XII provisions. As a result, no attempt is made to assign weight or priority to the observations of the discussion groups.

What is Working?

1. *Increased public and farmer awareness of conservation* was noted by five of the regional groups (Northeast, Southeast, North Central, South Central, and Northwest). The Northeast group, for example, observed: "The conservation provisions of the 1985 farm bill have resulted in an increased awareness of the need for soil erosion control and water quality improvement as well as the opportunities for wildlife benefits.... It has brought new farmers into the program. It has brought increased visibility with new audiences. For example, the conservation coalition that backed the legislation has provided a new perspective on the conservation program."

The Southern Plains group simply noted, "More people are talking about conservation." The Northwest group report stated that the economic understanding of conservation practices has improved through the STEEP program (Solutions to Environmental and Economic Problems). "Producers' understanding has improved, as exemplified by signups and contracts for CRP, which are going well."

2. *A greater degree of interagency cooperation and communication* was pointed to by discussants from the Northeast, Southeast, Southern Plains, Pacific, Southwest, and North Central regions. Said the Pacific regional report: "Cooperation and communication among the various agencies and with the local [soil and water conservation] districts has been enhanced by the need to work together on the Food Security Act. The local food and agriculture councils are working together well--their task is now well defined." The Northeast group reported: "Overall, the conservation provisions have resulted in better interagency cooperation, which, in turn, has resulted in a more interdisciplinary approach to problem-solving. The federal program has given states an incentive for beefing up their programs, for example, better wetland protection."

The Food Security Act "has brought administrative breakthroughs for USDA and other government agencies," noted the Southeast report. "Overall, there's unprecedented interagency cooperation and goal setting...greater awareness of

each other's problems. Fish and wildlife agencies are becoming more aware of USDA issues and programs."

3. *A greater measure of integration between conservation and commodity programs.* According to the Southeast group, "the act's legislative muscle required producers to make decisions about conservation on marginally productive land. One comment was that it forced the tie-in of commodity and conservation programs." The North Central discussants stated that "conservation is now officially regarded as a component of the commodity production system." According to the Southern Plains group, the CRP "is providing much needed and guaranteed income" and is "stabilizing land and commodity prices," functions normally associated with commodity rather than conservation programs.

4. *Improved, more efficient management and technical assistance.* As the Pacific group stated, "Morale of SCS staff in the field is improving. They can see their objective [and] this has enabled them to become more focused. They have a real 'can do' attitude now. There has been better training of federal, state, and local personnel...and their understanding of the Food Security Act provisions has improved.... In general, there's been an increase in field office efficiency--they've become more task oriented...and are making highly erodible land determinations more quickly. Technical improvements have included updating the field office technical guide, making use of the latest computer technology, and accepting the need for innovation."

The Southern Plains group reported "an increased efficiency of planning with the landowners...and an increased awareness of the field office technical guide on the part of conservation district personnel." A similar observation was made in the Northeast group: "Pressures of the farm bill have led to innovative, more efficient procedures at the conservation district field office level." In the Southeast group, discussants found that "the Food Security Act has spurred the development of technical means to address conservation problems: Soil surveys have accelerated; the enthusiasm of technical staffs has increased; conservation planning has been streamlined."

What is Not Working?

1. *Information, education, and outreach efforts need to be accelerated and improved.* While general awareness of conservation has increased in the view of most of the regional groups, several expressed concerns about farmer confusion over the conservation provisions of the Food Security Act.

"Getting information to landowners about the provisions is part of it," said the Northeast group. "The elderly, particularly those who have not been cropping their land, widows, and limited resource farmers are specific audiences with special information needs that are not being met. There is also some difficulty in making people in the Northeast realize that there is a problem with controlling erosion. Many people seem to feel that the conservation provisions pertain to other parts of the country. In fact, there is a high percentage of highly erodible or fragile land in the Northeast that cannot tolerate high erosion rates. The Northeast also has a large coastal area with associated wetlands. Certain areas, such as Delaware, do not have adequate wetland protection." This group also noted that small, widely dispersed land parcels, high turnover of ownership, and a high tenancy rate pose problems "of getting information to the right person and determining who is responsible for the operation of the farm."

"Despite the positive overall assessment," the Southeast group reported, "there's room for improvement." In the area of information and education, they said, "simple, easy-to-understand information, including information on alternative treatments needed, is necessary to ensure that we reach all producers. The Cooperative Extension System and other agencies should target their outreach to producers of all education levels and to limited-resource producers."

The Southern Plains group emphasized that "it is important but difficult to notify absentee landlords of Food Security Act requirements."

A number of these observations were echoed in a list of information and outreach problems compiled by the North Central group:

- "farmers won't acknowledge that they have an erosion problem;
- "little contact with absentee landowners;
- "inability to convince some landowners of program importance due to uncertainty about future payments;
- "confusion on PIK (payment-in-kind) certificates and their use;
- "lack of technical information on alternative practices;
- "lack of information dissemination from Washington on what other agencies are doing."

The South Central group cited "lack of producer understanding" among the major problems with the Food Security Act, and the Pacific group said "the main problem is seen as producers' lack of working knowledge of all provisions but CRP. This is especially true of sodbuster and swampbuster, where they were caught unaware of the immediate ramifications."

One frequently expressed concern was that many farmers do not feel the government will follow through with CRP payments over the long term, or with the monitoring and enforcement of sodbuster, swampbuster, and conservation compliance. There appears to be a fairly widespread perception that Title XII programs are impermanent in one way or another.

2. *The Food Security Act workload is straining farmers and existing agency staffs and resources.* The Northeast, Southeast, North Central, Pacific, and South Central regional groups all commented on this matter. "Too little staff, too little time, and too much workload," as the Pacific group succinctly put it. "This has led to difficulty in completing soil surveys in a timely fashion, for example."

In the Southern Plains, discussants found "too much paperwork is involved from the farmer's perspective.... There is an extreme volume of workload for federal and state agencies."

The North Central group pointed to the "imposition of extra work on private sector individuals (landowners and contractors), heavy or impossible workload on district employees...[and] Extension feels understaffed and underfunded for current workload."

"In the Northeast," that group reported, "the Food Security Act is viewed as an SCS program and lack of priority given by other agencies has hindered its implementation. Also, state and local goals for conservation districts are sometimes different from federal goals. There are inadequate resources to handle competing priorities within agencies." The Southeast group stated simply that "USDA and cooperating agency staffing is not adequate to meet the Food Security Act workloads and deadlines; therefore, increasing staff or pushing back the deadlines is recommended."

In this vein, the South Central group suggested that "additional technical assistance time is necessary on farms with below average management to solve conservation problems."

3. *Administrative and field office procedures need improving to expedite implementation of the Food Security Act.* A wide variety of procedural problems were noted by the regional groups. The Southeast group said, for instance, that "administrative procedures involving more than one agency are a problem in some areas. Apparently, filing systems for the AD 1026 forms are inadequate in some counties.... This...calls for timely meetings by field office and area office heads to resolve the problem and immediately issue joint staff directives." According to the Pacific group, "processing problems have arisen in the timely forwarding of Form 1026's from ASCS, FmHA, and FCIC [Federal Crop Insurance Corporation] to SCS." The Southwest group noted concerns about "the length of time it takes some county ASCS offices to get the AD 1026 and associated maps to SCS after the farmer has signed it." The group recommended that "ASCS

develop a policy to get the AD 1026 transferred to SCS for processing within 30 days of the farmer signing the document."

Several regional groups advocated a continuous CRP signup and simplified, fixed bids to expedite CRP enrollment. Elimination of alfalfa from sodbuster, or automatic waiver for alfalfa land, was recommended for similar reasons.

Regional Summaries: Concerns and Recommendations

Following are summaries of portions of the regional reports not presented in the previous section, with emphasis on specific concerns and recommendations.

Northeast

The group feels that the Cooperative Extension Service, because of its role as an information and education agency, should become more involved in information and education at the state and county level. The agency could be especially helpful in assisting producers to identify highly erodible land.

USDA should:

- Tighten the sodbuster rule to require reduction of soil loss to tolerable levels.
- Require, as applicable, conservation easement on all FmHA inventory land. Clarify transfer responsibilities under section 1314 [of the Food Security Act] to resource management organizations, for example, wildlife agencies.

Recommendations for CRP:

- Raise the regional bid pools to better reflect the high land values.
- Implement the water quality provisions in the law.
- Make erosion reduction criteria between CRP and conservation compliance consistent.
- Allow hay harvesting if used for mulch. Leave wildlife strips.
- Change the contract period from 10 years to a variable 5 to 15 years.
- Gully erosion should be considered in eligibility criteria on sites where sheet and rill erosion is less than 2T for the CRP.
- Provide additional incentives to plant trees and shrubs on CRP land.

South Central

Major problems with CRP:

- Need to enroll land in the CRP that cannot meet the conservation compliance provisions in counties that have already reached the 25 percent limit without creating an adverse economic impact.
- Law and rules are too restrictive on haying and grazing. Allow flexibility for establishment of vegetative cover.
- CRP may create an adverse impact on commodity and livestock prices when contracts expire.
- Consideration should be given to base reduction in establishing maximum acceptable rental rate.
- Eligibility requirements should be changed to encourage tree planting.
- Practices eligible for cost-sharing need to be better defined, as does the practical meaning of "establishment" of vegetative cover.

Recommendation for CRP:

- Prohibit participants from breaking out additional land and building base.

Major problems with conservation compliance:

- Factors used in the USLE [universal soil loss equation] and WEQ [wind erosion equation] and T values [soil loss tolerance values] are too subjective for a regulatory program. [Determinations of highly erodible land and

compliance are rendered in terms of these equations and T values.--Editor]

- Compliance may cause adverse economic impacts for producers, agribusiness, and others as land values may tend to decrease with more restrictive uses. Some lands may even be abandoned causing even more severe erosion problems.

- Producers are resistant to conservation compliance because it is perceived as improper intervention in farmers' affairs.

- Lack of uniform SCS planning guidelines.

- ASCS regulations for annual commodity programs are not compatible with SCS conservation plan requirements.

Conservation compliance recommendation:

- Increased funding for cost-sharing is needed to reduce financial impacts.

Recommendations for sodbuster and swampbuster:

- Alfalfa needs to be considered an agricultural commodity and not subject to sodbuster.

- Deadline for implementing a conservation plan under sodbuster should be extended.

- Definition of abandonment of wetlands needs clarity for cases where production of crops, such as rice, involve leaving the land idle for five or more years.

- Not all hydrophytic plants are true wetland plants.

- Wetland determinations between counties and states need to be more consistent.

Major problems with conservation easements:

- Regulations need to be finalized and questions about policy answered.

- Lack of publicity and information.

- Disposal of land is occurring before the Fish and Wildlife Service can review for possible easement.

Northern Plains

Major problems with CRP:

- The high cost of seed required for seedlings.

- Lack of control on grass seed quality.

- Inability to get enough acres planted to trees.

- CRP payments are high enough to attract speculators.

- CRP payments are competing with rental values of land.

- Farmers are placing their land in CRP and then underbidding young farmers for the available rental land.

- Potential adverse effects on the agricultural infrastructure of rural communities.

- The bidding procedure does not reflect land productivity.

- Weed control requirements are not being met.

- Impact of CRP payment on Social Security eligibility is unclear.

- Lack of public access to CRP land.

- Loss of crop base on CRP land.

- Long-term management not given enough emphasis in planning CRP recommendations.

- There is an unknown impact on the rancher.

- The lack of grazing or other use of CRP seeded acreage will be detrimental to stand.

- There is a lack of planning to ensure that CRP acres will remain in cover after the contract expires.

- We lack guidance on when a CRP stand is established.

- CRP land is a habitat for grasshopper and Russian wheat aphids.

- The location of CRP acreage should be public knowledge.

Recommendations for CRP:

- Open the bidding process to a continuing signup so that the CRP can be available as an option in conservation planning for highly erodible land.
 - Develop economic incentives for the CRP participant to provide public access to CRP acreage.
 - Develop plans to deal with desired outcome of CRP land beyond the 10 years of contract.
 - Provide for perpetual easements to extend the CRP beyond 10 years.
 - CRP payments should be protected from FmHA administrative offsets.
 - Expand the CRP target acreage from 45 million acres to 65 million or 70 million acres.
 - Use proven management practices on CRP land during the contract period to improve the stand for future grazing.
 - Reform the CRP bidding system to make it more equitable within and among bid areas.
 - Offer farmers an option to extend CRP contracts for an additional 5 to 10 years.
 - Improve incentives for planting trees and for wildlife habitat improvement.
 - Conduct an economic impact study in those counties with more than 25 percent of their cropland in the CRP and evaluate what would happen if the 25 percent limit were increased.
 - Allow placing the most highly erodible sections of fields ("shoulders") in CRP rather than whole fields. Also allow multiple windbreaks.
 - When determining CRP acres planted to trees, include windbreaks and wildlife woody plantings in the total acreage.
 - Reconsider the requirement to own land for three years for CRP eligibility.
 - Require the landowner to retain ownership of CRP land for at least the first three contract years.
 - Provide opportunities to reconsider plans and plantings to provide for additional cost-sharing for improvement practices.
 - Limit CRP participants from breaking out new land and increasing production, regardless of whether it is highly erodible land or not.
- Major problem with sodbuster:**
- Plowing up alfalfa in rotation is considered 'sodbusting'.
- Recommendation for sodbuster:**
- Remove alfalfa in rotation from being considered as sodbusting when it is plowed, and use conservation compliance provisions to cover these fields.
- Major problem with conservation easements:**
- Delay in FmHA debt reduction rule.
- Recommendation for easements:**
- Make criteria for conservation easements compatible with the tax treatment extension act of 1980.
- Problems with conservation compliance:**
- We are behind schedule in developing conservation compliance plans.
 - There is a lack of understanding of how the field office technical guide is developed and what is included in the field office technical guide.
 - There is a misunderstanding of T value.
 - There are problems in maintaining crop bases when changing to other crops.
- Recommendation for compliance:**
- Allow substitution of crops without affecting crop bases.
- Problems with other issues:**
- There is a lack of cost-share money to apply conservation practices.
 - The secretary of agriculture is not using the multiple-year set aside authority to provide cover.

- There is no guarantee as to when the 50 percent cost-share payment will be received by the farmer.

- Media need to report on more than just the agricultural subsidy and recognize what positive results are coming from the Food Security Act.

Recommendations for other issues:

- Provide more cost-share money to help install needed conservation practices.

- Develop a suitable formula for land class values for tax purposes. This is a state issue. New York and some other states have done work in this area.

- Require the secretary of agriculture to carry multiyear set-aside provisions.

- Provide for local input in field office technical guide development for better understanding of contents.

- ASCS offices should issue checks early enough so that the farmer can get the income in the specified tax year.

- Require mandatory cover crops on all set-aside acres.

- Do not permit any harvest whatever on idle acres.

- Prevent double-cropping on all farm program acreage.

- Clarify how rural development and conservation programs fit together.

Southwest

Major problems with CRP:

- There is a lack of good quality grass seed at a reasonable price.

- Many farmers are concerned whether the government will appropriate funds to cover the annual CRP payments.

- ASCS's policy in cost sharing for weed control on CRP acres and its impact on the successful establishment of a grass seeding.

Recommendations for CRP:

- Evaluate the need to regulate the grass seed industry to insure quality control.

- Change the eligibility criterion for tree planting to 2T and the predominance criterion from two-thirds of a field to one-third of a field.

- Some of the group recommended allowing haying, grazing, or burning in certain situations; others disagreed.

Problems with conservation compliance:

- The uncertainty among conservation districts as to their role in the appeals process and also their liability associated with approving or disapproving a conservation plan.

- The change from the T to 2T standard.

- What are the ephemeral and concentrated flow erosion treatment requirements under alternative conservation systems?

Recommendation for conservation compliance:

- Clarify the treatment requirements for ephemeral and concentrated flow erosion under alternative conservation systems.

Major problems with sodbusting:

- Allowing the use of alternative conservation systems on sodbusting native range.

- Classifying alfalfa and grasses in rotation as "sodbusting."

Recommendations for sodbusting:

- Change the law, rules, or procedures such that breaking out of alfalfa or grass in rotation is not considered sodbusting.

- When sodbusting native sod, the treatment requirement shall be set at the T level of the soil.

Major problems with conservation easements:

- The time it is taking to enact the conservation easements provision.

- The apparant lack of communication between the FmHA national office and local offices on the deed restriction procedures.

Recommendations for conservation easements:

- Change FmHA inventory land to allow more of it to be granted to wildlife and recreational interests.

Southeast**Major problems with CRP:**

- Eligibility criteria for CRP should match criteria used for the other provisions.
- A barrier to participation in CRP is the subsequent reduction of base and allotments.
- Landlord/tenant relationship: There is divergent opinion on whether the landlord or tenant should be held accountable.
- Obtaining adequate cropping histories.
- There is some question as to the federal and local commitment to monitoring and enforcing the conservation provisions.
- The definition of "operating unit" needs to be spelled out for experiment stations and prisons.

Recommendations for CRP:

- Requirements for establishing and maintaining grass or tree cover should be set for CRP participants.
- Additional incentives should be provided for tree planting under CRP.
- Cost-sharing practices should be established for no-till and conservation tillage when these practices are required in the farm plan.
- Allow the producer to use witnesses rather than written documentation when obtaining cropping histories.
- Each prison system should be a separate entity and an operating unit in itself.

Major problems with conservation compliance:

- Producers who use a sod-based rotation to meet the conservation compliance provision should not have to lose their commodity base--similar to set aside or diversion.
- Some highway department crews are ignoring basic conservation (sediment control) practices. Their actions are jeopardizing the eligibility of nearby farms, which are otherwise complying with the conservation provisions of the Food Security Act.

Recommendations for conservation compliance:

- Small acreages should be exempted from compliance provisions.
- Tax credit should be given for costs of Food Security Act compliance.
- Limited resource farmers and ranchers should be granted "forgiveness loans" for costs of successful compliance practices.

Recommendation for sodbuster:

- Producers should be allowed to do no-till planting of small grains into perennial grass pasture without sodbuster penalties.

Pacific**Major problems with CRP:**

- Farmers haven't been persuaded that the contract really is for 10 years.
- How assured is appropriation beyond 1989?
- What happens to plantings if agricultural emergency allows cancellation of the contract before the 10 years are up?
- Should planting recommendations be made on the basis of conservation and not necessarily on productive cover, which would be valuable after the end of the contract?
- Tree planting is lagging because of low-bid pools in high rainfall regions of counties.
- High quality grass seed of recommended varieties is scarce.

- How will conservation compliance apply to CRP cover destruction at the end of the contract?

- There is a high potential of stand damage by fire.
- State noxious weed laws are variable, and there is a lack of uniformity in weed enforcement in state CPO's.
- Vegetation control in lieu of grazing is needed for stand maintenance.
- Under the present system of setting bid levels, there are inequities.

The counties in the West are large, and they are prohibited from breaking them up.

Recommendations for CRP:

- CRP bids should be set based on yield, climate, and soil loss.
- More tree planting should be encouraged by such incentives as a one-time bonus, a percentage increase for annual rental payments, a longer contract period, or increased cost-sharing.
- There should be a multiagency policy handbook for all five provisions.
- There needs to be more planning consistency.
- Allow more local discretion in setting CRP bid levels.
- The field offices want more flexibility in making highly erodible land determinations. Some land should be declared highly erodible that has not, and some land has been declared highly erodible that should not have been.

Major problem with sodbuster/swampbuster:

- Lack of working knowledge of all provisions.

Major problem with conservation easements:

- Deed restrictions are creating problems with future buyers.

Recommendation for conservation easements:

- Publish final rule for conservation easement.

Major problem with conservation compliance:

- ASCS staff needs more training in order to make field checks for conservation compliance.

Recommendation for conservation compliance:

- ASCS should allow more flexibility to modify the crop acreage base for residue purposes to meet conservation compliance provisions.

North Central

Major problems with CRP:

- Possible inconsistencies in field office technical guide.
- Some counties are not willing to cost-share warm season grasses because of high seed prices.
- Lack of control of noxious weeds on set-aside and CRP acreage.
- Very low CRP signup in some states.
- Multiyear set-asides authorized in the Food Security Act are not being used.
- Water quality has not been addressed despite references in the farm bill.
- Need broader societal representation in determining farm program benefits at the county level instead of current farmer heavy system.
- Annual mowing is not permitted by regulations but allowed and required in some states.
- Better explanations of districts' role and responsibilities in conservation planning and approval are needed.
- Complexity instead of clarity of rules should be addressed.
- Farmers won't acknowledge that they have an erosion problem.
- Little contact with absentee landowners.
- Inability to convince some landowners of program importance due to uncertainty about future payments.
- Insufficient research on T, soil productivity, etc.
- Confusion on PIK certificates and their use.

- Lack of availability of technical information on alternative practices.
- Lack of information dissemination from Washington on what other agencies are doing.
 - Alfalfa and other hay crops in a rotation not considered an agricultural commodity.
 - Many landowners are still trying to wait out the possibility of relaxing deadlines for rules.
 - CRP payments are not indexed for inflation.
 - On grass covered CRP land, producers are not allowed to plant trees at own expense.
 - Landowners whose fields do not meet the two-thirds highly erodible land criteria for CRP benefits sometimes fall under the one-third highly erodible land criteria for cross compliance.
 - Crop base exchanges are limited to (or by) crop residue levels.
 - CRP signups can't compete with set-aside payments.
 - Low signup in tree planting.
 - Low recognition of timber products as a crop.
 - High cost of required permanent structures is a problem.
 - Some feel the use of a bid system in CRP is inefficient.

Recommendations for CRP:

- Allocation of funds for information and education.
- Increase cost-effectiveness for CRP by returning to real bid system.
- Have a continuous CRP signup.
- Let alfalfa in rotation waive immediate need for plan.
- Adopt legislation to set up trust funds for demonstration funded by a checkoff system.
 - Encourage multiyear set-asides as in law.
 - Need a long-term funding commitment to program rather than annual appropriations.
 - Provide adequate staffing for all affected agencies.
 - Increase incentive rates.
 - Another corn bonus.
 - Waive the two-thirds requirement if the farmer is willing to bid whole farm into CRP.
 - Increase incentives for tree planting.
 - Lengthen contract period to 20 years for trees.
 - Allow eligibility for fields planted to trees to be one-third highly erodible land versus two-thirds highly erodible land.
 - To increase eligibility for forestry, include stream corridors.
 - Lower eligibility requirements for trees to 2T.

Problems with sodbuster/swampbuster:

- Only a few have lost eligibility because of noncompliance with sodbuster and swampbuster.
 - Inconsistent interruption of swampbuster rule between districts.

Problem with conservation compliance:

- Conservation compliance requires treatment of cropland but this idea is not reinforced in annual programs.

Recommendation for conservation compliance:

- Maintain flexibility to meet conservation compliance objectives.

Problem with conservation easements:

- Little action has been taken regarding conservation easements (sections 1314 and 1318 of the Food Security Act).

Recommendation for conservation easements:

- Investigate easements as long-term solution (rather than permanent conservation structures, like terraces).

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CONFERENCE PROGRAM

Sunday
November 1

- 4:00-9:00 p.m. Registration
Lobby
- 6:00-9:00 p.m. Exhibits / Poster Papers
Exhibition Hall
- 7:30-9:00 p.m. Icebreaker (social)
Exhibition Hall

Monday
November 2

- 7:30-8:30 a.m. Continental Breakfast
Exhibits / Poster Papers
Exhibition Hall
- 8:30 a.m. General Session
Atlanta Room
- Presiding:* Barbara Osgood, Assistant Director, Economics and Social Sciences Division, Soil Conservation Service, Washington, D.C.
- Welcome*
Donald Van Meter, President, Soil and Water Conservation Society, Muncie, Indiana
- Conference Objectives*
Marlin Edwards, Agricultural Resources Specialist, Pioneer Hi-Bred International, West Des Moines, Iowa
- Keynote Address*
Peter Myers, Deputy Secretary, U.S. Department of Agriculture, Washington, D.C.
- 9:10 a.m. *How Goes Implementation: The Conservation Reserve*
Federal Perspective
Milton Hertz, Administrator, Agricultural Stabilization and Conservation Service, Washington, D.C.
State/Local Perspective
Greg Larson, Program Specialist, Minnesota Board of Soil and Water Resources, St. Paul
Private Perspective
Dean Kleckner, President, American Farm Bureau Federation, Rudd, Iowa
Viewpoints
Ralph Grossi, President, American Farmland Trust, Washington, D.C.
Roger Holck, President, Kellogg-Sully Bank and Trust, Kellogg, Iowa

- 10:40 a.m. *How Goes Implementation: Conservation Compliance and Sodbuster*
Federal Perspective
Wilson Sealing, Chief, Soil Conservation Service, Washington, D.C.
State/Local Perspective
Ray Ledgerwood, Area Field Representative, Washington State Conservation Commission, Pullman
Private Perspective
Myrl Mitchell, President, Plains Cotton Growers, Lenora, Texas
Viewpoints
Bill Laycock, Head, Department of Range Management, University of Wyoming, Laramie
Robert Warrick, Co-chairman, Agricultural Issues Committee, and member, Agricultural Campaign Steering Committee, Sierra Club, Meadow Grove, Nebraska
- 1:15 p.m. General Session
Atlanta Room
- Presiding:* Lynn Ketelsen, Farm Director, Linder Farm Network, Wilmar, Minnesota
- How Goes Implementation: Swampbuster and Conservation Easements*
Federal Perspective (Swampbuster)
Gary Margheim, Director, Land Treatment Program Division, Soil Conservation Service, Washington, D.C.
Federal Perspective (Conservation Easements)
Vance Clark, Administrator, Farmers Home Administration, Washington, D.C.
State/Local Perspective
Dave Risley, Assistant Administrator, Division of Wildlife, Ohio Department of Natural Resources, Columbus
Viewpoints
Lloyd Jones, Supervisor, North Dakota Wetland Habitat Office, U.S. Fish and Wildlife Service, Bismarck, North Dakota
Duane Sand, Resourceful Farming Project Director, Iowa Natural Heritage Foundation, Des Moines
- 2:45 p.m. *How is the Concept and Definition of "Highly Erodible Land" Working in Actual Practice and What Soil Loss is Tolerable?*
Charles Benbrook, Executive Director, Board on Agriculture, National Research Council, Washington, D.C.

- Mack Gray, Special Assistant to the Chief for Congressional and Public Liaison, Soil Conservation Service, Washington, D.C.
 Martin Burch, Area Conservationist, Soil Conservation Service, St. Joseph, Missouri
- 3:30 p.m. **The Changing Nature of Conservation Planning**
Federal Perspective
 Sherman Lewis, Director, Conservation Planning Division, Soil Conservation Service, Washington, D.C.
State Perspective
 Gale Martin, Executive Director, Mississippi Soil and Water Conservation Commission, Jackson
Local Perspective
 Clarence Durban, President, National Association of Conservation Districts, Plain City, Ohio
Viewpoints
 Larry Neppel, District 3 Vice-president, American Society of Farm Managers and Rural Appraisers, Fort Dodge, Iowa
 Leroy Holtzclaw, Area Conservationist, Soil Conservation Service, Rock Falls, Illinois
 Jim Jacobs, President-elect, Land Improvement Contractors of America, Scottville, Michigan
- 5:00 p.m. **Regional Discussion Groups**
- Tuesday
November 3**
- 7:30-8:30 a.m. **Continental Breakfast Exhibits / Poster Papers**
 Exhibition Hall
- 8:30 a.m. **General Session**
 Atlanta Room
- Presiding:* Don Muhm, Farm Editor, *The Des Moines Register*, Des Moines, Iowa
- Meeting the Information and Education Challenge**
 Myron Johnsrud, Administrator, Extension Service, Washington, D.C.
- Viewpoints**
 Peter Nowak, Associate Professor and Extension Soil and Water Conservation Specialist, University of Wisconsin, Madison
 James Ladlie, President, Agri-Growth Research, Inc., Hollandale, Minnesota
 Don Baloun, District Conservationist, Soil Conservation Service, Marshalltown, Iowa
- 9:30 a.m. **Monitoring and Evaluating the Effectiveness of the Conservation Provisions**
 Ken Cook, Senior Associate, The Conservation Foundation, Washington, D.C.
 Jeff Zinn, Analyst and Specialist in Natural Resources Policy, Congressional Research Service, Washington, D.C.
 John Miranowski, Director, Resources and Technology Division, Economic Research Service, Washington, D.C.
 Robert Lentz, Director, Cooperative Forestry, U.S. Forest Service, Atlanta, Georgia
- 10:35 a.m. **Achieving Integrated Resource Management Goals**
Improved Pasture and Range Vegetative Cover
 Fee Busby, Director of Extension, Cooperative Extension Service, University of Wyoming, Laramie
Water Quality Improvement
 Will Erwin, Special Advisor to the Administrator, U.S. Environmental Protection Agency, Bourbon, Indiana
Tree Planting
 Dale Robertson, Chief, Forest Service, Washington, D.C.
Wildlife Habitat Improvement
 Larry Jahn, President, Wildlife Management Institute, Washington, D.C.
- 1:15 p.m. **Regional Discussion Groups**
- 2:00 p.m. **General Session**
 Atlanta Room
- Presiding:* Norm Berg, Washington, D.C. Representative, Soil and Water Conservation Society, Washington, D.C.
- Impacts of the Conservation Title on the Nation's Agricultural Production System**
 Ken Bader, Chief Executive Officer, American Soybean Association, St. Louis, Missouri
 John Johansen, Vice-president of Sales Support, Deutz-Allis Corporation, Waukesha, Wisconsin
 Marty Strange, Director, Center for Rural Affairs, Walthill, Nebraska
- 3:15 p.m. **Regional Discussion Group Reports**
- 3:50 p.m. **A Look Ahead**
 George Dunlop, Assistant Secretary for Natural Resources and Environment, U.S. Department of Agriculture, Washington, D.C.

Papers presented at the conference, or excerpts therefrom, appear in the January-February 1988 issue of the *Journal of Soil and Water Conservation*, the official publication of the Soil and Water Conservation Society. Copies of the *JSWC* issue are available for \$6.00 each from SWCS, 7515 W.R. Ankeny Road, Ankeny, Iowa 50021-9764; (515) 289-2331.

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United States Senate

COMMITTEE ON
 AGRICULTURE, NUTRITION, AND FORESTRY
 WASHINGTON, DC 20510-8000

April 7, 1988

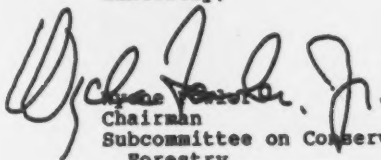
Ms. Maureen Hinkle
 Director, Agriculture Programs
 Audubon Society
 801 Pennsylvania Ave., S.E.
 Washington, D.C. 20003

Dear Ms. Hinkle:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,


 Patrick J. Leahy
 Chairman
 Subcommittee on Conservation and Forestry

Additional Questions for MS. MAUREEN HINKLE, NATIONAL
AUDUBON SOCIETY, submitted by Senator Conrad

1. You were involved in the development of the conservation title of the 1985 Food Security Act. You testified in support of the swampbuster provisions, essentially advocating an extension of sodbuster provisions to include wetlands. Was it your intention at that time simply to discourage the future conversion of uncultivated wetlands into cropland?
2. In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.
3. What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?
4. In your opinion, are local USDA officials reluctant to impose a severe penalty--loss of all federal farm program benefits--if they felt that a swampbuster or sodbuster violation was minor or unintended?
5. Would you be supportive of making certain wetlands eligible for the Conservation Reserve Program?



National Audubon Society

NATIONAL CAPITAL OFFICE

801 PENNSYLVANIA AVENUE, S.E.

WASHINGTON, D.C. 20003

(202) 547-9009

April 29, 1988

The Honorable Wyche Fowler
Chairman
Subcommittee on Conservation
and Forestry
United States Senate
Committee on Agriculture, Nutrition,
and Forestry
Washington, D.C. 20510-6000

Dear Senator Fowler:

This letter is in response to the additional questions submitted by Senator Conrad, to be included in the record of the hearing called on March 24, 1988.

Question 1: You were involved in the development of the conservation title of the 1985 Food Security Act. You testified in support of the swampbuster provisions, essentially advocating an extension of sodbuster provisions to include wetlands. Was it your intention at that time simply to discourage the future conversion of uncultivated wetlands into cropland?

Answer: Discussion of "future" versus past conversion in the farm bill debate was dealt with at the time the issue of commencement was addressed. Most of the discussion on exactly what would constitute commencement centered on drainage districts, and how much would be grandfathered into a project that was essentially incomplete on December 23, 1985, but was in the process of completion. It was determined that commencement would involve "legally committed substantial funds toward the conversion of wetlands by entering into a contract for the installation of any of the activities; or by purchasing construction supplies and materials for the direct purpose of converting wetlands." There had to be a financial obligation prior to December 23, 1985. There could not simply be a "pile of tiles sitting around." Conversion that was started could be completed if economic hardship would result without completion. All persons who think they started conversion prior to date of enactment have until September 19, 1988 (one year after promulgation of the final rule) to request ASCS to make a commencement determination in order to be exempt. They must demonstrate that the conversion of the wetland has been actively pursued and must complete the conversion by January 1, 1995. 883 comments received by USDA concerned when conversion would be interpreted to have occurred. Some of these commenters asked that plans per se be sufficient for an exemption and that ongoing projects be grandfathered. No one appealed the final regulations which exempted neither plans alone or ongoing projects.

It was the intention of congress not to "simply discourage," but to prevent conversion of wetlands for crop production. Crop production was in surplus at the time, but over and above that temporary condition, wetlands were recognized as valuable and even priceless, and many cannot be restored easily if at all. Moreover, since agriculture has been responsible for 87 percent of the loss of wetlands and this drastic loss was actually encouraged, it seemed appropriate to halt the incentives then in place. Prohibiting program subsidies was a first step, and removing tax incentives was a second step, as Senator Boren told the Senate when he urged support of his tax code reform amendments on swampbuster.

In regard to "uncultivated wetlands," Congress did not limit wetlands to "uncultivated" wetlands, but deliberately included cultivated wetlands. Section 12.32(a)(3) of the final rule specifies that potholes, playas and other wetlands that are flooded or ponded for extended periods (defined as 15 days or 10 percent of the growing season, whichever is shorter) will not be considered previously converted even if cropped prior to December 23, 1985. Manipulation of such lands that alters the hydrologic regime (unless SCS makes a minimal effect determination) is defined as conversion under swampbuster.

If wetlands were cropped prior to December 23, 1985 and drainage was involved, such wetlands are regarded as previously converted and may be improved by additional drainage, provided that no additional wetlands are brought into production of an agricultural commodity. See Section 12.5(d)(1)(i) and also Section 12.33(b).

To reiterate, "wet spots," or "topographical depressions" that are seasonally flooded or ponded do "retain significant wetland functions even if the water regime was modified before Dec. 23, 1985. If these areas continue to meet the wetland criteria they will be identified as wetlands rather than converted wetlands, despite the prior manipulations, to protect the remaining wetland values." (52 F.R. 35200) Farmers may continue to crop such seasonally flooded lands, but may not increase drainage unless SCS makes a minimal effects determination.

Question 2: In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.

Answer: The impact of swampbuster on wetlands protection is to send out an unequivocal signal that subsidies will not be readily forthcoming any longer for farmers who convert wetlands for crop production. The green light has switched to a red light. As ASCS Administrator Milton Hertz told the House Agriculture subcommittee on conservation, credit and rural development on April 13, 1988, when farmers first got the message that they could lose all

program benefits for sodbusting or swampbusting, "it scared the hell out of them." He further told the House subcommittee, "It's a whole new activity for them. It's the first time agriculture has been regulated."

In regard to whether swampbuster has encouraged or discouraged wetland conversion activities, the evidence is inconclusive and Congress needs to find out. Congress could, and in our view, should direct that documentation be done.

Question 3: What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?

Answer: Audubon urges that emphasis be placed on deterrent, and greater preventive enforcement of the law to help get the message across. From USDA's statements made at the March 24 hearing, most violations are under appeal. Very few, if any, benefits have been withheld from farmers.

Question 4: In your opinion, are local USDA officials reluctant to impose a severe penalty--loss of all federal farm program benefits--if they felt that a swampbuster or sodbuster violation was minor or unintended?

Answer: There is very little evidence that any enforcement of swampbuster has taken place thus far. Even major or intended violations are not being enforced. In our opinion, the reluctance of officials to enforce the law is due to continued mixed signals from USDA and others. If a conversion was minor or unintended, there are provisions in the law for flexibility.

Provisions which enable local USDA officials to apply a fair and equitable remedy for allowable conversions include the following: For sodbuster there is a "small areas" exemption (7 CFP Part 12.22(c)) for situations involving minor discrepancies between what was approved and what actually happens in a field. For swampbuster, such situations are addressed in the regulations by allowing: conversion "actively pursued" or continued on a regular basis (7 CFR Part 12.5(d)(5)(ii)); conversion delayed "due to circumstances beyond the person's control," or conversion started by farmers who would suffer "unnecessary economic hardship" if not allowed to complete the conversion (7 CFR Part 12.5(d)(5)(iv)). Similarly, a minimal effect determination may provide relief for a "minor" or unintended swampbuster violation. Although local ASCS and FWS officials make such minimal effect determinations, they are intended to be rare.

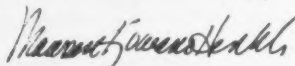
Question 5: Would you be supportive of making certain wetlands eligible for the Conservaton Reserve Program?

Answer: Greater efforts to restore wetlands are desirable. The CRP offers three opportunities for wetland restoration. It has been pointed out that all class IV-VIII lands, including wetlands, may already be eligible for the CRP. Nationwide, 9,514,300 acres are classified as IVw-Vw which should be eligible for CRP bids. In addition, Conservation Practice Number 9 is available to farmers for the creation and restoration of shallow water areas, including potholes. Although bidding has been low in this category, more can be done. Indeed, the FWS is publicizing this opportunity and offers inhouse assistance to farmers to restore water areas. Also, the eligibility requirement of 2/3rds highly erodible land could be reduced to 1/3 as has been done for trees and filterstrips. USDA may include in the CRP lands "that are not highly erodible lands but that pose an off-farm environmental threat, or if permittted to remain in production, pose a threat of continued degradation of productivity due to soil salinity." (Sec. 1231(d)(1)(B)(2)). More bids could be encouraged in CP-9 if USDA included this emphasis in the next (7th) bidding round. Lastly, buffer zones may be established around water bodies, including wetlands, and paid cost share and rental rates are available for the 10 years of the CRP.

In addition to the CRP, wetland easements could be encouraged. FmHA could be required to provide for wetland easements. Congress could add a permanent easement option to the CRP program, and could purchase easements to permanently remove wetlands from cropping.

We hope that these answers are helpful in understanding the law and regulations. We are all trying to understand better the implications of the law, and believe that improved understanding can help to bring about compliance. Better communication is certainly desirable -- in the field, within the rank and file of USDA, with Congress, as well as with conservationists.

Sincerely yours,



Maureen Kuwano Hinkle
Director
Agricultural Policy

Senator CONRAD. All right. We will proceed and go directly to Mr. Cook and then we will come back for some further questions because I would like to return to the conversation we were having and try to capture precisely what your positions are. Mr. Cook.

STATEMENT OF KENNETH A. COOK, SENIOR ASSOCIATE, THE
CONSERVATION FOUNDATION, WASHINGTON, DC

Mr. COOK. Thank you, Senator. It is an honor to be invited to testify and I appreciate that very much. I appreciated also your comments earlier today, Senator, about the need to balance and communicate the views of the environmental community and the farm community. I think that, speaking for myself, and for a lot of other people involved in the creation of the 1985 farm bill, I think we prided ourselves on doing that and still do. I have a quote in my testimony by the French novelist Balzac: "Marriage often unites for life two people who scarcely know each other." And I think that has happened with regard to environmentalists and farm interests in the course of implementing the 1985 farm bill. I want to also compliment your staff. We have worked in the past very closely and I look forward to working with them in the future.

I have three quick points to summarize, then I want to move to the swampbuster question. I'm just guessing that that is the thing you want to focus on. [Laughter.]

Senator CONRAD. That is a safe guess.

Mr. COOK. Thank you, sir. First of all the conservation title and the regulations implementing it need time to work. We finally have a solid set of regulations together. No major changes would be advisable at this time in any aspect of those regulations. Second, we do need a rigorous monitoring of the implementation. I think the greatest threat to the integrity of the bill, both from an environmental standpoint and from the standpoint of fairness to farmers, is if we let rumor and innuendo, overzealousness or underzealousness, get out of control out there in the field, even for good intentions. But until we can quantify that and make certain exactly what the circumstances are, we are going to be prone to make bad policy.

And finally, I think that, and I will not dwell on this, but I think that Congress really should began evaluating the whole question of what happens, not just when the CRP contracts expire, but also in the happy event, which I hope will be soon and we see some signs that it may be coming along, of recovery in the farm economy. What is going to happen to our conservation title, which is linked so closely to commodity programs. What is going to happen to that title when the incentives for the commodity programs diminish and we see the prospect of diminishment of the effectiveness of sodbuster, compliance, and swampbuster.

The CRP: my main concern there, of the ones I have listed in my prepared testimony, is that we have an undersubscribed situation in the Corn Belt, around the Chesapeake Bay and other areas. We will probably need additional incentives. You folks are doing very well in North Dakota, I think, and that is good news as far as we are concerned. Sodbuster and compliance: again, I think the main thing to emphasize is monitoring and evaluation. And on that note

I would like to, if I may, enter into the record, along with my written testimony, a very fine article by Mr. John Walter who is the conservation editor of "Successful Farming" magazine, in the March 1988 issue. "Should you be scared of 'HEL'," he says, HEL meaning highly erodible land. And the concluding comment he makes here is that: "But one thing seems clear already: This is one farm program that favors the conservation-minded farmer." And it is a very interesting, and I think to some extent, a contrasting view about how farmers are receiving these programs in the countryside. This seems to be a message that things not only are not so bad as they might seem, but they are really quite workable as we have put these new rules in place.

Now to swampbuster, on page 6 of my prepared testimony. I think I will read through this carefully so I do not make mistakes. I tried to lay out some arguments that had been overlooked in the course of these discussions about the fundamentals of swampbuster. And they are important arguments. I, like Bob and Maureen and Dan Weiss and Justin Ward and folks from the National Wildlife Federation, who were involved in this from the very beginning, want to make sure that this law is fairly and, yet, rigorously enforced. I have the distinction of coining the term swampbuster, for whatever that is worth, in a rare moment of poetic inspiration. I hope that I can do as well in the next few minutes. It is probably useful to point out a basic characteristic of swampbuster and sodbuster in comparison.

At first glance, it appears to many people that the harsher policy is swampbuster. In fact, that is not the case.

Under sodbuster and conservation compliance, farmers are allowed to farm highly erodible land as they always have, provided that land was cultivated at least once between the years 1980 and 1985. Some students of swampbuster have eyed this "grandfather" exemption and sought it for wetlands conversion. And there is some debate about the congressional history on that matter. But under sodbuster, "grandfather" is scheduled to die in 1990, alas, at the hand of conservation compliance—after which sodbuster requires affected farmers to change current farming practices in order to remain eligible for USDA programs.

Swampbuster is more lenient, for it allows farmers to continue indefinitely the same farming practices they followed prior to December 23, 1985. They need make no changes. In effect, the grandfather clause in swampbuster is immortal. However, farmers simply cannot convert drain, clear, et cetera—if they have not before, and then plant affected lands in agricultural commodities under swampbuster.

Now it is true that this is the imposition of an opportunity cost on farmers who would like to convert and plant wetlands and still remain eligible for commodity program benefits and other program benefits. But, the central opportunity that is lost is eligibility for a Government entitlement program. Denial of that opportunity underlies the entire title 12 of the Food Security Act of 1985. Those opportunity costs also come into play for sodbuster—some lands will have to be cropped less often—and actual costs are involved, too, unlike swampbuster, since most land that is affected by sodbuster will require conservation practices.

So in summary, under sodbuster farmers will have to change their ways of farming and pay for it; under swampbuster, they will not. In fact, for fields that are often wet but have a cropping history, and that is commonly the case, the common practice of using that acreage to satisfy set-aside requirements will continue to be allowed. So I guess if I were to sum up the circumstances here, that I think that some of the confusion that has arisen is trying to make sodbuster and swampbuster symmetrical with regard to cropping history.

And for the reasons I have just stated and others, that symmetry was not part of the congressional intent, strictly speaking. And it would not be a useful change. In fact, if we allowed any land that merely had been cultivated to be exempt from swampbuster, as opposed to land that had been cultivated and drained, there would have been no point in passing swampbuster in the first place.

I think that concludes my comments, Senator.

[The prepared statement of Mr Cook, an article, "Should you be scared of 'HEL'?", and responses to questions submitted by Senator Conrad follow:]



The Conservation Foundation

Statement of Kenneth A. Cook
Senior Associate, The Conservation Foundation
Before the Subcommittee on Conservation and Forestry
Committee on Agriculture, Nutrition and Forestry
U.S. Senate
March 24, 1988

Mr. Chairman, distinguished Members of the Committee. I am Kenneth A. Cook, a senior associate with The Conservation Foundation, a non-profit environmental research organization based in Washington, D.C.

Since 1983, I have been actively involved, first in the development, then in the passage and implementation, of the soil and wetlands conservation provisions that became Title XII of the Food Security Act of 1985.

It has been my privilege at various times over the past five years to serve as a technical and policy consultant on these issues to the American Farmland Trust, National Audubon Society, Sierra Club, Soil and Water Conservation Society, and other organizations. Most recently, as a staff member of The Conservation Foundation, I prepared a "White Paper" for the Soil and Water Conservation Society summarizing the proceedings of a major conference on Title XII the Society held last fall in Kansas City. The meeting was attended by 500 leaders from the farm, environmental, and academic communities, officials from all levels of government. Every region of the country was represented. The document is a useful compendium on the status of the implementation of Title XII, as perceived both by Beltway aggies and environmentalists, and by farmers and local officials who are trying to make these sweeping new policies work across the nation. My colleague, Norman Berg, who represents the Society in Washington, will formally submit this document for the hearing record.

The Significance of Title XII: Changing Signals

More than a century ago, Honore de Balzac, the great French novelist, clearly foresaw Title XII would be significant for bringing together environmentalists and farmers in what can only be described as sublime union: "Marriage," Balzac observed, "often unites for life two people who scarcely know each other." With the exception of a few misunderstandings, I believe that the two parties have recently gotten to know one another with impressive speed, thanks to Title XII.

In functional terms, the Conservation Title attempts to reverse the conflicting signals American farmers have received from U.S. Department of Agriculture programs for almost a half century.

Conservation programs, which were always voluntary and provided the most modest economic incentives, signalled farmers to conserve soil and water resources; encouraged them to make the best use of their land within its physical and biological capabilities.

It is a wonder that conservation programs accomplished as much as they did, for commodity, credit, and other USDA programs--much more powerful influences, on the whole--generally rewarded farmers for doing just the opposite. Commodity program benefits were, in proportion, greatest for producers who planted as much land as possible each year--no matter how fragile--in corn, wheat, soybeans, or other program crops. Farmers Home

Administration Programs extended ownership and operating loans strictly on the basis of a farmer's ability to repay; if repaying entailed plowing steep slopes or draining wetlands, so be it.

Farmers who conserved--who resisted turning pastures and woodlands and wetlands and hedgerows into cropland--were consistently penalized for their husbandry.

The 1985 FSA and its implementing regulations aim to change that. Reversing a 50 year trend can hardly be expected to be an inexpensive or altogether smooth undertaking. Yet it has been less expensive and smoother than it might have been. In my remarks today, I want to emphasize three central themes, all of which have broad support among environmentalists and those who are implementing Title XII in the field:

The Conservation Title and the regulations that we finally have in place must have time to work. No changes are advisable at this time.

USDA must rigorously monitor the implementation of Title XII and report its findings in a timely manner. Congress should continue and upgrade its oversight functions. This is, after all, among the most sweeping resource conservation initiatives enacted by Congress in the past decade.

Congress must evaluate means by which the principles and accomplishments of Title XII can be protected in the longer term, particularly in the event of another surge in commodity prices.

Conservation Reserve Program

The 23 million acres enrolled in the CRP thus far, and the

additional 4.5 million acres on which bids were offered earlier this year, testify to the popularity of the program. Overall, it is accomplishing its intended purpose.

General comments on CRP:

--The undersubscription of land in the Corn Belt, Chesapeake Bay watershed, and other areas is an important concern. Probably bids will have to be increased or other inducements (such as CRP bonus certificates) will have to be provided to attract such land in the CRP.

--Expansion of CRP enrollment authority is not a priority at this time. Why? Because USDA has about 20 million acres or so of enrollment authority remaining--over half the area of the largest state east of the Mississippi, which happens to be Georgia. Markets are changing, and land idling needs may be, too. We have plenty of time and authority to adjust if surpluses persist and land retirement needs remain large. Water quality goals can be met, at least experimentally, within current goals; and there is no evidence that the existing enrollment goals are a constraint on current enrollment. It may be useful to revisit this question a year from now, and the most sensible points of departure are bills that have been introduced by Senators Nunn (S. 1521) and Dole (S. 2045).

Sodbuster and Conservation Compliance

The latter provision, which under existing regulations embraces some 165 million acres (39 percent) of U.S. cropland, will, together with CRP, be the focus of implementation efforts

over the next year.

In its final regulations for conservation compliance, USDA dropped all reference to T values as a standard for erosion reduction. In its place, erosion reduction will be evaluated according to cropping system criteria set forth in SCS local technical guides. I will not reproduce the spirited discussion of this subject found on pages 16-18 of the SWCS White Paper. The Conservation Foundation is on record as having opposed the regulatory change, but that is water over the dam. We are convinced that USDA acted in good faith--that the Department wants compliance to achieve a great deal, and in a manner fair to farmers. We hope USDA was right in this particular decision, and we will stand behind them in implementing it rigorously.

So much hinges on the implementation of this policy--the success of Title XII and the prospects for further, large-scale reforms that help the farm economy, the Treasury, and the environment.

I cannot emphasize enough the need for thorough monitoring of conservation compliance and timely reporting of evaluation results.

Swampbuster

Is this not l'enfant terrible of Title XII?

To date, only in a mere handful of instances have farmers lost USDA benefits as a result of swampbuster violations. As Senator Kasten forcefully suggested some weeks ago, the real problem, if there is one, may really be not that enforcement is

overly stringent; rather, that it may be too lax. Yet from the uproar heard in some parts of the country, one might conclude swampbuster is edging legions of farmers toward the brink of economic extinction.

It may be useful to point out basic characteristics of the swampbuster policy which are commonly misunderstood, and which, to my mind, eliminate the need for revisions or remedies that currently are receiving a great deal of discussion among congressional staff.

At first glance, it might appear that swampbuster is a much harsher policy than sodbuster. Actually, the reverse is true, and making the two policies somehow symmetrical makes no sense.

Under sodbuster and its gigantic younger brother, conservation compliance, farmers are allowed to farm highly erodible land as they always have, provided that land was cultivated at least once between the years 1980 and 1985. Some students of swampbuster have eyed this "grandfather" exemption and sought it for wetlands conversion. But grandfather is scheduled to die in 1990--at the hand of conservation compliance--after which sodbuster requires affected farmers to change current farming practices in order to remain eligible for USDA programs.

Swampbuster is much more lenient, for it allows farmers to continue indefinitely the same farming practices they followed prior to December 23, 1985. They need make no changes. In effect, the grandfather clause in swampbuster is immortal.

Farmers simply cannot convert (drain, clear, etcetera) and then plant affected lands in agricultural commodities. (Unless, of course, their activities result in minimal alterations of wetlands, or have been commenced prior to December 23, 1985.)

It is true that swampbuster imposes an opportunity cost on farmers who would like to convert and plant wetlands and still remain eligible for commodity program benefits. But opportunity costs also come into play for sodbuster--some lands will have to be cropped less often--and actual costs are involved, too, since most land that is affected will require conservation practices.

Under sodbuster, farmers will have to change their ways of farming and pay for it; under swampbuster, they will not. In fact, for fields that are often wet but have a cropping history, the common practice of using that acreage to satisfy set-aside requirements will continue.

Regardless of confusion about the legislative history of swampbuster, including the possibility of a missing grandfather for cropping history, there are strong arguments for not exhuming that grandfather now. To provide such an exemption would not, as it does in sodbuster, protect past farming practices for a fixed grace period. Rather, it could condone some future wetlands conversion practices.

Those sodbusters who have cropped highly erodible land at least two years between 1980 and 1985 do have one type of relief from actual and opportunity costs that swampbusters do not: enrollment in the CRP. This has led to proposals, such as

S. 2143, to amend the CRP to make wetlands eligible. I would merely suggest that until it is clear that the existing swampbuster policy is causing significant or widespread hardship, such a major change in the CRP is unwarranted.

Conservation In Good Times and Bad

The conservation provisions of the 1985 FSA were designed in an atmosphere of severe economic problems; and as designed, it is under those conditions that the provisions have greatest effect. Crop surpluses and the need for idling large amounts of the land are the driving forces behind the CRP. High direct payments and participation rates in the commodity programs provide the leverage for sodbuster, swampbuster, and conservation compliance.

What happens if markets improve, as I and other conservationists hope? If the influence of the commodity programs abates, will the influence of Title XII diminish as well?

And what happens at the end of CRP contracts? Will we see widespread conversion of highly erodible lands without attention to proper conservation practices? Will taxpayers see a multi-billion dollar investment seriously compromised?

These questions rank in importance with the issue of proper implementation of Title XII. It is my view that the Congress should begin preparing to answer them, perhaps in the 1990 farm bill.

The most promising strategy may be to extend the spirit, if not the letter, of Title XII to the only economic activity that

remains relatively constant in agriculture in good times and bad: the flow of ownership and operating loans from the farm lending community.

Senator Fowler boldly and skillfully proposed including several such measures in last year's farm credit bill, as did Congressman Tim Penny in the House agriculture committee.

Those measures failed, but the ideas are worth pursuing.

I suggest pursuing them as follows: Can this subcommittee ask the farm finance community to describe their plans for balancing conservation with production when market conditions improve in agriculture, and Title XII holds less sway? Can the subcommittee ask how lenders will view loans that might compromise wetlands, highly erodible lands, or lands formerly enrolled in the CRP?

The response to such questions would help establish whether a need exists to legislate certain conservation requirements as a condition of federal assistance to farm lenders.

Thank you, Mr. Chairman, for the opportunity to testify.

LAND

By John Walter, Conservation Editor

Should you be scared of 'HEL'?

By now you've probably heard the horror stories about the conservation compliance requirements in the federal commodity programs. The rule requires you to have a conservation plan by 1990 for your "highly erodible land," or HEL, as the bureaucrats now call it.

Because the Soil Conservation Service has geared up to inform farmers of their obligations under the new rule, a lot of farmers have been shocked recently to find out that they own or lease HEL.

Successful Farming has reported the initial fears of farmers who believe the idea of conservation compliance is unfair. A recent survey by the magazine, however, showed that only 16% of farmers oppose the idea, with 65% in favor of it, and 18% unsure.

But now we've entered the real-world phase of this program. Farmers have started stepping into their local SCS offices to begin the process of getting a conservation plan for their HEL.

Just how is this process going?

Are our worst fears justified or not?

We sent ag writer Ron Brunoehler to a recent informational meeting in Lee County, Illinois, to report on local farmers' responses to the planning process there. Brunoehler summed up the farmer attitude in the county this way: "It wasn't nearly as bad as they thought it would be."

"I expected it to be a real headache when I first heard about it, but it wasn't that way at all," Harold Adams, a Dixon, Illinois farmer, told Brunoehler. Adams had just spent 40 minutes working out his plan with the assistance of an SCS employee. "I have one 155-acre farm that was determined highly erodible and I can qualify it just by eliminating one disking. I'll still be operating it basically the way I have been, using contouring, conservation tillage and a rotation. It certainly won't be any hardship."

Clyde Yount breathed easier after attending a planning session. "I was concerned that there'd be lots of expense for terracing and other improvements in order to comply," he said. "But we've tried to be conservation-minded all along with the practices we're following, such as contouring and chiseling. All we'll need to do is put our program on paper



Farmers have begun receiving field maps with "highly erodible lands" (HEL) determinations. To stay eligible for farm program benefits, conservation plans are needed for HEL fields. Some 800,000 farmers are expected to need a plan.

to file our plan."

Yount has his farm custom-operated and said he would go back to no-till if he could find an operator with the proper equipment and experience.

Dennis Boynton won't need to make many changes as long as he can keep his most erodible land in set-aside. He's in basic agreement with the spirit of the law, but questions some of its logic. "For example, I have one fairly large field that isn't determined highly erodible because less than 30% of the field is in that category. Yet I have a smaller field that is considered highly erodible and will need a plan even though there's not as much erodible acreage in that field as in the larger one."

Dixon County is relatively flat, and probably only 10-15% of the farmers in the county will be affected

by conservation compliance. In Stephenson County, Illinois, however, more than 90% of the farms in the county have HEL. Because it was a pilot project, the county is well ahead in the planning process. By late January about 150 plans had been written and some 25-30 farmers each week were continuing to work through their plans.

Farmer response has been generally positive, according to SCS District Conservationist Jim Ritterbusch.

Still, some farmers are experiencing difficulties with the process, especially with crop rotation changes that their plans include. Melvin Rackow, for example, says: "I have a 400-acre-plus corn base, but if I plug in all the hay they want me to grow to comply, I'll be below my corn base in some years. I think that aspect of the law needs correction."

No doubt certain corrections will be made. USDA has already shifted to an approach that uses local, more flexible erosion control standards.

But one thing seems clear already: This is one farm program that favors the conservation-minded farmer. Dean Holmes, for example, who farms 1,000 acres in Stephenson County, Illinois, says: "I'm not concerned. We've always been in dairying and my dad, back in the 1930s, was using strips and terraces. 'We've used minimum tillage right along and so basically all we'll need to do is put our practices into a plan.' [3]

Illustration: Helen Kuroki

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United States Senate

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WASHINGTON, DC 20510-8000

April 7, 1988

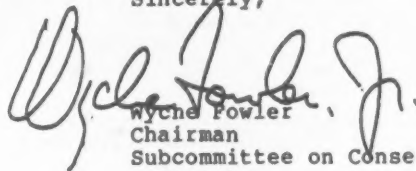
Mr. Ken Cook
Conservation Foundation
1250 Twenty-Fourth St., N.W.
Washington, D.C. 20037

Dear Mr. Cook:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
Chairman
Subcommittee on Conservation and
Forestry

Additional Questions for MR. KEN COOK, CONSERVATION
FOUNDATION, submitted by Senator Conrad

1. At the hearing on March 24, you stated that "if we exempted [from swampbuster restrictions] all land that was previously cultivated, there would have been no need for swampbuster." It is quite likely that many wetlands existing in 1985 had never been cultivated; for example, bottomland hardwood (forest) swamps. Does your statement mean that you do not believe that these previously uncultivated wetlands should be protected?
2. You were involved in the development of the conservation title of the 1985 Food Security Act. You testified in support of the swampbuster provisions, essentially advocating an extension of sodbuster provisions to include wetlands. Was it your intention at that time simply to discourage the future conversion of uncultivated wetlands into cropland?
3. In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.
4. What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?
5. In your opinion, are local USDA officials reluctant to impose a severe penalty--loss of all federal farm program benefits--if they felt that a swampbuster or sodbuster violation was minor or unintended?
6. Would you be supportive of making certain wetlands eligible for the Conservation Reserve Program?



The Conservation Foundation

April 29, 1988

Sen. Wyche Fowler, Jr.
Chairman,
Subcommittee on Conservation and Forestry
Committee on Agriculture, Nutrition, and Forestry
SR-328A
Washington, DC 20510

Dear Senator Fowler:

Attached are my answers to the questions submitted by
Senator Conrad concerning the March 24, 1988 hearing.

I appreciate the opportunity to testify.

Sincerely,

Kenneth A. Cook
Senior Associate
The Conservation Foundation

cc: Senator Kent Conrad

1. Swampbuster was designed to eliminate the possibility that farm program benefits subsidize wetlands conversion. It was generally agreed by experts prior to the 1985 Act that the prairie pothole region was the principle areas where wetlands were likely to be threatened by subsidized drainage. Swampbuster was meant to offer protection to other wetlands such as the bottomland hardwoods, as you mentioned. However, in the bottomland hardwood region, where a great amount of drainage had taken place prior to 1985, it was thought that the principal incentives had to do, first, with the soybean market, and secondly, with the benefits offered to those who drain wetlands under the federal income tax code. Those tax benefits, incidentally, were substantially reduced by "swampbuster" provisions in the 1986 tax reform act. Swampbuster was designed to protect any undrained wetland, cultivated or uncultivated, that would be vulnerable to drainage as a result of the incentives offered by USDA's farm programs. The prairie pothole region, because of its high rate of participation in commodity programs and its vast expanses of valuable wetlands, was a priority concern at the time the Food Security Act of 1985 was being drafted. If farmers have cropped but have not drained a wetland prior to December 23, 1985, they can continue to crop it. If they drain it, they are subject to swampbuster.

2. The purpose of swampbuster is to discourage future conversion of wetlands that had not been drained or otherwise significantly altered prior to the 1985 Food Security Act. Specifically, swampbuster was designed to make certain that farmers who had been cropping undrained wetlands prior to the date of enactment would be able to continue cropping those wetlands in the future and not be subject to swampbuster so long as they did not drain the wetlands and then plant crop on them. So the focus was on the future conversion of uncultivated wetlands, but swampbuster clearly applies to prevent future drainage of wetlands that had merely been cropped prior to enactment of the 1985 FSA.

3. I believe swampbuster has helped stem wetlands conversion. Unfortunately, USDA has not undertaken a comprehensive analysis of the impact of swampbuster and so no data are available to support this belief.

4. I think the record compiled thus far with regard to withholding farm program benefits under swampbuster is fairly murky, and therefore I have not drawn any conclusions about whether swampbuster enforcement has been too lax or too stringent.

5. I have seen no evidence that local USDA officials have been reluctant to impose a severe penalty if they felt a swampbuster or sodbuster violation was "minor" or "unintended." I would also say that there is no evidence that minor or unintended violations have resulted in the actual loss of benefits under sodbuster and swampbuster. Until one or both of these problems can be documented, there is no justification for weakening the penalties for sodbusting or swampbusting.

6. I do not support making certain wetlands eligible for the conservation reserve program at this time.

Senator CONRAD. All right. Well, I think now we have really gotten to the nub of the issue because somebody did not inform the Senator or the Congressman at the time, Congressman Daschle, now Senator, of that point. Let me read to you what Senator Daschle, then Congressman Daschle, said. This is on introduction of swampbuster. "... This is a very practical piece of legislation. It simply says that as of now we won't be breaking any additional wetlands out for agricultural purposes." That was on July 9. On July 31, he came with another version and he said this, "... If production was under way at any time in the past that land would be grandfathered." I do not know how anything could be more clear. "That is the intent of the author of this legislation. It is exactly my intent to do exactly the same for wetlands with regard to provisions of sodbuster. Any agricultural land that has been in production at any time, up until the date of enactment, is protected. I want to make sure everyone understands that."

Now I do not know what could be more clear. This is what Congress was told by the author of the bill.

Ms. HINKLE. Senator.

Senator CONRAD. Ms. Hinkle.

Ms. HINKLE. I agree with what is said there as far as it goes. But it was clear throughout all of the discussion on swampbuster that a farmer can crop what he has always cropped. If it is a wetland he can crop that, in exactly the same way that he has done prior to December 23, 1985. The only difference is that he cannot drain that land if that land needs draining. If he disturbs the hydrologic regime and he drains it, and artificially manipulates that land in any way so as to alter the characteristics, it is converting wetland to drained land, then that is commenced. I mean if he commenced after December 23, 1985, then he is a swampbuster. If he commenced before December 23, 1985, or if he was in the process of commencing, then he is grandfathered. So as far as what Senator Daschle said, his language as far as it goes, is in harmony with what we think went all the way through. It is just that his language did not go to the draining aspect.

Senator CONRAD. Well, let me just comment that farmers certainly do not see it that way. I mean they read this language, the record is replete with references like the one I have just read. Absolutely replete. And again, I just repeat the sponsor's words. "If production was underway at any time in the past that land would be grandfathered. That is the intent of the author of this legislation. It is exactly my intent to do exactly the same for wetlands with regard to provisions for sodbuster. Any agricultural land that has been in production at any time, at any time, up until the date of enactment is protected." Now that is not what is happening with these regulations. Farmers are having their past practices altered. I heard Mr. Cook say with respect to swampbuster, past practice is not altered. That is not what is occurring.

Mr. COOK. In what respect are their practices being altered? Are they unable to farm land they farmed before?

Senator CONRAD. Yes.

Mr. COOK. Why?

Senator CONRAD. It is being delayed.

Mr. COOK. No. No.

Senator CONRAD. If you have——

Mr. Cook. They are delayed. Have they ever been delayed before planting wet fields?

Senator CONRAD. Oh, certainly, but we are talking about situations in which a specific spot that they may have drained in the past, they are now precluded from doing.

Mr. Cook. Why are they——

Senator CONRAD. That have been previously cultivated.

Mr. Cook. If they have drained it in the past, swampbuster should not apply to them.

Ms. HINKLE. That is right.

Senator CONRAD. Precisely. I am now——

Mr. Cook. I am with you on that. I think we all are. And if there are instances of that we would certainly like to stand behind you and make sure—if there is a clear history of drainage.

Senator CONRAD. We appreciate that.

Mr. Cook. Very much.

Senator CONRAD. Next question is previously cultivated, and that is where we obviously diverge. When I read the history, if it was previously cultivated, it's grandfathered, it's exempt. And that is where we diverge.

Mr. GRAY. I do not think that is where we diverge, Senator. I think where we diverge is the question, and Maureen and Ken can correct me if they do not agree. But the question it seems where we diverge is when we are talking about, let us take the example again of the pothole. It has been there. The farmer has plowed through that, worked through it, many times he has been delayed on it, a week, 10 days, but it is wet. But then, after swampbuster was in effect he decides then to artificially drain that wet spot, then he comes under the provision of swampbuster. If he has drained it before swampbuster went into effect, and the drainage was not operational, he has a right to go back in. That is the way I understand it and I would ask my two colleagues if they have any difference.

Mr. Cook. I think that was the intent.

Mr. GRAY. That is where I think we part company on that particular point. I think that is really the nub of the argument.

Senator CONRAD. Well, let me raise this question with you, because you have got several sets of circumstances out there. We have talked about several here. Our reading of it is, if it is previously cultivated it is exempt. I hear something different from you. I think, frankly, that is the way it was sold to Congress. I have read from the statement of the author. I think it is quite clear what he intended. When we go to the question of nuisance spots that were normally cultivated, it is our clear reading that those were intended to be exempt in both the House and the Senate. And I read this morning from the testimony of Peter Meyers.

He clearly intended that nuisance spots be exempt. What is your position with respect to nuisance spots? Let us get off the other conflict that we have. Let us go to the question of nuisance spots. What is your position on that?

Mr. Cook. I think there are cases when one person's nuisance is another person's resource. How do you define a nuisance spot? Is it tenth of an acre? Is it 15 acres that is wet all the time in a big

field? What is a nuisance spot? If there is, if it is a matter of a delay of a few days, there can be a benefit; a possibility that there may be wildlife benefits. And my understanding—I am not an expert on the wildlife aspects of this—is that there are, in many cases, wildlife benefits. Then I would say that one would weigh the delay that the farmer would experience for that nuisance spot if it is a few days, as was suggested in the research report you pointed out. Then I would say that in return for this entitlement, which runs many hundreds of millions of dollars, I gather, in North Dakota currently, those delays should be tolerated by farmers in return for receiving the very large benefits they receive under the commodity programs.

Senator CONRAD. And that is where we really part company. To me I think that is so unreasonable in application, so unreasonable in terms of what that means to farmers that you are just way outside the bounds of what is practical and reasonable.

Mr. COOK. But—

Senator Conrad. And when you are outside the bounds of what is practical and reasonable you will create very serious problems for yourselves, for the future, and for all of us. Because those who would like to be supportive of programs of conservation of our resources will just have to part company.

Mr. COOK. But Senator—

Senator Conrad. Because it is not what you, what you have just said is not reasonable.

Mr. COOK. But Senator—

Senator Conrad. And it is not reasonable out in the field.

Mr. COOK. Why are the delays so much more onerous in 1988 than they were in 1984 or 1983 or 1982? Why is it that these delays have become so intolerable? My suggestion is—

Senator CONRAD. Because they are not delays that were in 1984 or 1985. That is precisely the point. They cultivated this in the past and now they are being asked to delay. If you had a big field.

Mr. COOK. Right.

Senator CONRAD. And you had a 16 bottom plow. And you had a nuisance spot, a wet spot in that field and you were, it was being insisted, and it is your land, that you farm around that. You would find that so unreasonable and preposterous that you would have a hard time conceiving how anybody would make the argument that is a reasonable thing to do.

Mr. COOK. But have you not farmed around that almost all of your life. Why is it unreasonable now?

Senator CONRAD. No, in many cases not. That is precisely the point.

Mr. GRAY. Well, the question I have Senator Conrad, are these wet holes, these potholes that are out in these fields that have been there for years? They have been plowing around them and then going back on them when they are drier and skimming them off and getting them, using them as part of their field, but they are always delayed. Are they constantly being artificially drained each year? I mean is that what, I mean because it seems to me that what the swampbuster does, it does not change that, their operation at all. I mean if they have been delayed on that spot, they still go back as Milt Hertz said and it is the same as it was in 1984

and 1985. Two weeks later or whatever, at 7 to 10 days they hit that spot, get it ready as part of the field. But swampbuster has nothing with that.

Senator CONRAD. OK.

Mr. GRAY. The question is, I guess the question I have Senator, is whether or not they are constantly in these potholes? These many potholes they might have around their operation, have been artificially draining them, then it would affect that if they were planning on going in. But if they have been operating around those for years in the normal course of operation this does not change it at all, that I see.

Senator CONRAD. So you would accept the proposition. Let me see if I am hearing you correctly. That whatever a farmer has done in the past, he can do in the future with regards to swampbuster?

Ms. HINKLE. With regards to cropping.

Mr. GRAY. Yes. If he has cropped that land. Let me try to say it. I think we are sort of missing each other on semantics. I do not think there is as much disagreement here. But let us just take the field where he has got some wet spots in it and in the past he has had to go around those wet spots. Because they were, it took a few weeks or a few days for those to dry out. Swampbuster does not change that at all. He has been cultivating that field. He has always had to deal with wet spots. But he goes back in and gets them when they dry out. They do not, he cannot plow them at the same time he plows the rest of the field or he is getting the field fitted.

But if he then decides on those wet spots to go in and artificially drain them after swampbuster, then that is where swampbuster kicks in. But if it does not change his operation the way he has been doing it in the past at all. I mean he continues to go back and get those wet spots ready a few days later. And no one is asking him to delay them any more than the weather would be the factor in that point.

Senator CONRAD. I think we should have, not here in Washington, but we ought to go out into the field and I would invite you right now, all of you, to come with me to North Dakota and we will see the application out there and how, what appears to be reasonable, and as you stated, sounds reasonable, how that gets translated into what happens to farmers in my State. And then we will see how reasonable you think it is. Because I promise you, if you come with me and you see the way things are being applied and the threats that are being made to farmers, you will see why they are excited. We are not dealing with a bunch of unreasonable people out there. We are not.

Mr. COOK. Senator, I—

Senator CONRAD. We are dealing with very reasonable, decent, honorable people.

Mr. GRAY. Yes, I am sure you are.

Senator CONRAD. And they are mad. And I will tell you they are mad, for Milt Hertz thinks there is no anger. He has been on the—I do not know who he has been talking to on the phone—but I go to community forums. I am with the people, and I tell you, they are just mad; and these are not unreasonable people.

Mr. COOK. Senator, I would certainly, I welcome your invitation, I accept it. I would like to accompany you out there and I will assure you that while out there I will stay very close to you. [Laughter.]

Senator CONRAD. We may have to have some provisions for all of our security. [Laughter.]

No, I mean these people really are, they are very angry. But they are very decent, honorable people. And legitimately upset and I think if you see how what sounds like a reasonable thing, how it gets translated, as we move through the process. I think you would be able to appreciate why some reasonable changes need to be made, either administratively or through the law.

Mr. GRAY. Go ahead.

Ms. HINKLE. Senator, before we are dismissed I would like to make two points. One is that I have great respect for Senator Daschle, but he is not the only father of swampbuster. There are others who are exerting their paternity over this provision. I think before you isolate one of the fathers at the expense of some of the others, of course one is dead, but in any case, there are other opinions as to cropping and what is, or is not, wetlands. We had an evolution of what should be considered wetlands. At one time we considered "W" lands, but that is too many lands. There are 120 million acres which are "W" lands, and there are only 76 million acres which are wetlands. And there are 59 million acres that are "W" and wetlands, and 51 million acres which are "W", but not wetlands. And there are 19 million acres that are wetlands but not "W". And I think that we may be talking about some of these "W" lands as opposed to wetlands.

Senator CONRAD. Well, I will tell you, what your interpretation of wetland is and what shows up on the map might be two very different things. And remember that translating what seems reasonable here into what is reasonable and practical in the field, I mean sometimes they just—it is like two ships crossing in the night.

Ms. HINKLE. Oh, we believe that there should be ground truthing on these issues. It is not black and white.

Senator CONRAD. No.

Ms. HINKLE. And there is room for disagreement. It could very easily be that the mapping or the determinations are incorrect and what we would like to have done is an expedited appeals process. And that benefits not be taken away before due process.

Senator CONRAD. Let me ask if you would support what Milt Hertz talked about here this morning in terms of the penalty?

Ms. HINKLE. We haven't seen the regulations and I would believe that the Department would have to promulgate such a change.

Senator CONRAD. Well these are well known, "failure to fully comply" is something that has been in the regulations for agricultural compliance purposes for many years. And so it is something that has got a long history and I would be interested, when you have had a chance to look, if we could get a response from you, if you think this is a reasonable way to deal with penalty. Frankly, I think it makes great sense. It is one way of relieving part of the problem out there. You can imagine when you are dealing with folks that have been under enormous economic stress for 7 or 8

years, and then they have something new, continually one thing after another. Diesel tax and heifer tax and swampbuster and sod-buster and they hear one story one place and another story another place. And they have got a neighbor reporting them and they have got a plane flying over their land saying they have violated something. I mean it is almost surrealistic, what is going on out there. And I do think that it is terribly important that we, on both sides, do not get behind our rhetorical barricades and quit talking to each other. So, I do repeat my invitation to have you come out and see what is happening because I think you would see that there is a way of making some adjustments there that would be reasonable, would not undermine the principle of swampbuster, but would make the whole thing go down much more easily.

Mr. GRAY. Well I would be glad to. I would second that invitation Senator Conrad, to go out and take a look at it onsite because I do not think the conservation group certainly meant to be unreasonable with this and I think—

Senator CONRAD. I do not think so either.

Mr. GRAY [continuing]. And I do not think a farmer should be told that if he has been operating, he or she has been operating a wet spot in a field, and he has had to go around that and delay a few days, that when the time comes to redo it he is not going to get his field ready the same way. There should not be any provision under swampbuster on that. It is the question of whether he is going to then make a change in that wet spot and artificially drain it. And I think that is where the key point is and we could see on the ground what is happening.

Senator CONRAD. Yes.

Mr. GRAY. And we could talk to some of the farmers and I think that would be very helpful.

Senator CONRAD. I do too. I think we would cut through an awful lot of what we have got here if we could get out there and have you see and hear real life examples of what is happening. I really think it would help us all.

Mr. GRAY. We ought to get out there when they are starting to get these fields ready.

Senator CONRAD. Yes. This would be, in the very near future here, would be a good time to get out there. Thank you very much.

Mr. GRAY. Thank you sir, thank you very much.

Senator CONRAD. Thank you for your presentation. Now we are going to go into recess as previously called for by the Chairman. We will come back in at 2, and we will move to conclusion. We have 6, 10, 12 more witnesses to hear from. We have covered 10, I think it may take until 5 before we are finished here and I would ask all of those who are witnesses on the list if we can please maintain order in the hearing room until we have concluded. I think if we, if it takes until 5 we ought to take until 5, and we ought to have everybody be able to get their say on the record and hear from everyone who is scheduled as a witness. We are prepared, Senator Fowler and I, to stay until 5 or whatever it takes to make sure that everybody gets their say.

I want to thank all of you for your patience. We will stand in recess until 2.

[Recess.]

Senator FOWLER. The subcommittee will come to order. The next panel is Bobby Webster, Adviser, National Cotton Council, Waynesboro, Georgia; Jim Nichols, Commissioner of Agriculture, State of Minnesota, representing the National Save the Family Farm Coalition, American Agriculture Movement, Inc., and the League of Rural Voters, St. Paul, Minnesota. We are going to ask Mr. Donald Henderson, vice president of the Indiana Farm Bureau from Indianapolis to join this panel so he can catch an airplane.

Mr. Webster, I'll let you begin. Welcome as a fellow Georgian and as a friend.

**STATEMENT OF R.L. "BOBBY" WEBSTER, COTTON FARMER,
ADVISER, NATIONAL COTTON COUNCIL, WAYNESBORO, GA**

Mr. WEBSTER. Mr. Chairman and members of the subcommittee, I am Bobby Webster, a cotton farmer from Waynesboro, Georgia. I am currently chairman of the Georgia Commodity Commission for Cotton and serve as an adviser to the National Cotton Council and it is in this behalf I testify today.

We appreciate the opportunity to present our views on the implementation of the conservation provisions and the Conservation Reserve Program contained in title XII of the Food Security Act of 1985.

Conservation policy is very important to the members of the National Cotton Council. We make our living from the land, and the wise use of this natural resource is vital to our existence. Since the passage of the Food Security Act of 1985, producers have become more conscious of the need for a sound conservation policy. We will continue to support such a policy as long as it is practical and economically feasible.

The sodbuster, swampbuster and conservation provisions of the act are also being implemented; but at a slower rate. All producers who are participating in Government programs of any kind must now meet the highly erodible test. If the cropland was farmed before December 1985 the producer must have a conservation plan approved by 1990 and have it fully implemented by 1995. If the highly erodible land was not in cultivation prior to December 1985 and is being farmed now, the producer must implement a plan now. The penalties for noncompliance are severe—the loss of all Government program benefits, including FmHA loan eligibility.

The National Cotton Council is encouraging its members to meet these requirements. If progress is not made in additional development of plans, many producers will find themselves ineligible for much-needed Government program benefits by 1990. We urge Congress to monitor this situation very closely.

In the development of State and local plans, the Soil Conservation Service should, in every case, consider the economic impact to the producer. While many plans are not onerous as they would have been under the previous rules, the cost of compliance with many plans is still quite high.

Another provision that has always concerned us about the conservation provisions is the far-reaching impact of the penalties for noncompliance. Producers must comply with the development and implementation of conservation plans or lose eligibility not only on

the highly erodible farm, but also on all other farms. These cross-compliance and offsetting compliance requirements are very restrictive and complicated, especially when farms include many tenants. Our organization has always opposed any form of cross- or offsetting compliance. We believe each farm should stand on its own merit. While we realize that this is in the act, we believe it should be reconsidered.

Mr. Chairman, in Georgia, we are concerned about the one-third rule. In the previous five signup periods, farmers may have come into the ASC office and been approved on a criteria for the CRP Program and maybe only one-third of the field had been approved.

Now, on the sixth signup, he comes back in and they'll say that he can put the rest of that field into the program if it is planted in pines. We believe the producer ought to have the option to have an approved cover-crop on that farm, not be forced into planting something on his farm that he doesn't have to. Of course, as long as it's approved by SCS as approved cover, he should have those options.

In summary, we agree with Congress that a strong conservation policy is in the best interest of U.S. agriculture. We do not agree that conservation compliance should be used as a leverage to force program participation. Instead conservation compliance should be managed in such a way as to maximize voluntary adoption by producers. We realize that conservation programs and issues will continue to be a major concern in the future. We urge that these programs be formulated in such a way as to maximize participation and cost effectiveness while taking into account the economic impact to producers.

We thank you for the opportunity to present these views and will be happy to answer any questions. Thank you, sir.

[The prepared statement and responses to Senator Conrad's questions of Mr. Webster follow:]

Statement of R. L. "Bobby" Webster
before the
Subcommittee on Conservation and Forestry
Senate Committee of Agriculture, Nutrition and Forestry
March 24, 1988

Mr. Chairman and members of the Subcommittee, I am Bobby Webster, a cotton farmer from Waynesboro, Georgia. I am currently serving as an advisor to the National Cotton Council, and it is in this behalf I testify today. Before that I was chairman of the Georgia Cotton Commission, a producer delegate to the National Cotton Council, and a member of the Producer Steering Committee.

We appreciate the opportunity to present our views on the implementation of the conservation provisions and the Conservation Reserve Program (CRP) contained in Title XII of the Food Security Act of 1985.

Conservation policy is very important to the members of the National Cotton Council. We make our living from the land, and the wise use of this natural resource is vital to our existence. Since the passage of the last Act, producers have become more conscious of the need for a sound conservation policy. We will continue to support such a policy as long as it is practical and economically feasible.

Agricultural producers have responded well to the Conservation Reserve Program. With the recent close of the sixth sign-up for the Reserve, an additional 4.5 million acres was offered. Producers will have to wait until about May 20th to see which bids will be accepted. Cotton producers in Georgia, Missouri, Alabama, Oklahoma and Texas have been enthusiastic participants in this program. For example, in the latest sign-up, major cotton states offered the following acreage: Alabama - 90,872; Georgia - 228,831; Missouri - 187,393; and Texas - 500,964. In the five previous sign-ups, a total of 864,498 acres of upland cotton base entered the Reserve. As the program continues, we are sure additional cotton base will be offered. Many counties now have already reached the 25% limit which will, of course, impact some major cotton-producing counties.

The "sodbuster," "swampbuster" and conservation compliance provisions of the Act are also being implemented; but at a slower rate. All producers who are applying for government benefits of any kind must now meet the "highly erodible" test. If the cropland was farmed before December, 1985, the producer must have a conservation plan approved by 1990 and have it fully implemented by 1995. If the highly erodible land was not in cultivation prior to December of 1985, and is being farmed now, the producer must implement a plan now. The penalties for non-compliance are severe -- the loss of all government benefits, including FmHA loan eligibility.

While the incentive for compliance is there for producers, we are concerned about the apparent lack of response. The Soil Conservation Service (SCS) last year estimated that about one million conservation plans would need to be developed by 1990. That equates to about two new plans each week in every SCS field office until the deadline. Many producers have not taken the conservation provisions seriously.

Obviously they believe that the provisions will be changed before full implementation. The need for additional education seems evident. SCS should encourage and educate producers for the need to develop conservative plans where applicable. The National Cotton Council is encouraging our membership to meet these requirements. If progress is not made in the additional development of plans, many producers will find themselves ineligible for much-needed government benefits by 1990. We urge Congress to monitor this situation very closely.

We would like to commend SCS for action taken last year in revising the interim rule concerning compliance requirements for highly erodible land. The new rule allows flexibility to the state and county administrators in formulating plans that are adaptable to local production situations. The new rule is a welcome change from the previous criteria of meeting "T" values.

In the development of these state and local plans, SCS in every case should consider the economic impact to the producer. While many plans are not as onerous as they would have been under the previous rule, the cost of compliance with many plans is still quite high. For example, a producer in West Texas informed us of a plan that was developed for about 2700 acre. of land he farmed. As the land was classified "highly erodible," his plan will require the expenditure of over \$80,000 for the construction of terraces. Because ACP funds were not available in his county, and his inability to get financing from FmHA without compliance, this producer is in a real dilemma. Unless he can find some source of cost-sharing, he may be forced out of farming after 1995. This is even more likely if the 25% limit in CRP is met in his county before that date. This example points to the need for more sensible and economically-feasible plans by SCS.

Another provision that has always concerned us about the conservation provisions is the far-reaching impact of the penalties for non-compliance. Producers must comply with the development and implementation of conservation plans or lose eligibility not only on the "highly-erodible" farm, but also on all other farms. These cross compliance and offsetting compliance requirements are very restrictive and complicated, especially when farms include many tenants. Our organization has always opposed any form of cross or offsetting compliance. We believe each farm should stand on its own merit. While we realize that this is in the Act, we believe it should be reconsidered.

In summary, we agree with Congress that a strong conservation policy is in the best interest of U.S. agriculture. We do not agree that conservation compliance should be used as leverage to force program participation. Instead, conservation compliance should be managed in such a way as to maximize voluntary adoption by producers. We realize that conservation programs and issues will continue to be a major concern in the future. We urge that these programs be formulated in such a way as to maximize participation and cost effectiveness while taking into account the economic impact to producers.

We thank you for the opportunity to present these views and will be happy to answer any questions.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

JERRY MCELROY, MONTANA	EDWARD S. LUTZ, MISSOURI
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TOM HARKER, IOWA	ALDY BOSCHWITZ, MINNESOTA
SEN. CONRAD, NORTH DAKOTA	MITCH MCCONNELL, KENTUCKY
WYCHE FOWLER, JR., GEORGIA	CHRISTOPHER S. "TOD" BOWEN, MISSOURI
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United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510-8000

April 7, 1988

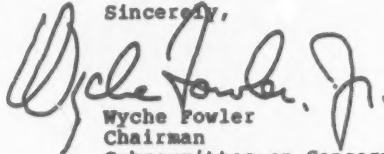
Mr. Bobby Webster
Advisor
National Cotton Council
1110 Vermont Ave., N.W.
Suite 430
Washington, D.C. 20005

Dear Mr. Webster:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
Chairman
Subcommittee on Conservation and
Forestry

Additional Questions for BOBBY WEBSTER, NATIONAL
COTTON COUNCIL, submitted by Senator Conrad

1. Do you think that your members are generally supportive of wetland preservation? Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland?
2. Under what circumstances would your members find it economically beneficial to convert wetlands to cropland? Would farmers be more inclined to help preserve wetlands on their property if they received some compensation from the government?
3. Would you be supportive of making certain wetlands eligible for the Conservation Reserve Program?

NATIONAL COTTON COUNCIL OF AMERICA



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April 19, 1988

The Honorable Wyche Fowler
Chairman
Subcommittee on Conservation & Forestry
Committee on Agriculture, Nutrition & Forestry
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to provide the attached responses to Senator Conrad's questions in follow-up to Mr. Webster's testimony on March 24, 1988. Mr. Webster sincerely appreciates the opportunity to testify on behalf of the cotton industry during the hearing.

Sincerely,

John Maguire
Vice President - Washington Operations

AJM/jlc
Enclosure

Responses to Questions on Wetlands Presented by Senator Conrad

1. Questions: Do you think that your members are generally supportive of wetland preservation? Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland?

Answers: The membership of the National Cotton Council is supportive of wetland preservation as we are of the total concept of conservation. However, the definition of wetlands must be a practical one that truly addresses the problem. The conversion of swamp land or flood basins to cropland should be discouraged. On the other hand, the designation of low areas of a field that may hold water in the winter and are normally drained and planted should not be classified as wetlands. The occasional pooling of water in low-lying areas of fields is a common occurrence and the classification of these areas as wetlands is not feasible. This classification discourages participation and does not address the real problem. As I stated in my previous testimony, we must maintain a practical approach to conservation issues for them to be effective.

If the Soil Conservation will define wetlands using a more realistic approach, then our membership will support the discouragement of future drainage of wetlands.

2. Questions: Under what circumstances would your members find it economically beneficial to convert wetlands to cropland? Would farmers be more inclined to help preserve wetlands on their property if they received some compensation from the government?

Answers: The conversion of wetlands to cropland would be made on a purely economic basis. A producer would have to assure himself the conversion would allow sufficient returns for his investment. The major factors that would be considered would be the crops to be planted, the cost of production, the ability to obtain an economic yield and, of course, the price expectation of the commodity.

The use of government compensation can be an effective means of encouraging the preservation of wetlands. Such compensation will be figured into the economic decision of conversion to cropland. The use of payments has worked well in getting participation in the Conservation Reserve Program. Limiting factors of these types of inducements would be producer payment limitations and conditions of eligibility for the payments.

3. Question: Would you be supportive of making certain wetlands eligible for the Conservation Reserve Program?

Answer: The Council is a strong supporter of the Conservation Reserve Program as evidenced by the large participation by our members. The eligibility of wetlands in the Reserve could be an effective means of preservation. We would support wetland eligibility for the Conservation Reserve Program. Again, the conditions of eligibility and definitions of wetlands would be factors for consideration.

Senator FOWLER. Mr. Henderson, we are glad to have you from the Indiana Farm Bureau in Indianapolis.

**STATEMENT OF DONALD E. HENDERSON, VICE PRESIDENT,
INDIANA FARM BUREAU, INC., INDIANAPOLIS, IN**

Mr. HENDERSON. Thank you, Mr. Chairman. I appreciate this opportunity, and I also appreciate the consideration you've given me. I would like to, if I could, for the sake of brevity, ask that my entire prepared remarks be put into the record.

Senator FOWLER. Without objection, so ordered. We appreciate your summarizing your testimony. It leaves some time for questions.

Mr. HENDERSON. I think that one of the items of concern in Indiana is as the SCS staff devote their time to meeting the requirements of conservation compliance, there have been other more traditional services that are being left undone. Such things as pond construction, planting assistance, farm conservation plans, and assistance to nonagricultural groups in our State, such as county planning agencies, are reduced or almost dropped entirely because the State staff is spending quite a bit of their time on the Federal compliance measures. Many of these traditional kinds of things have been done by State staff and need to be done and still be continued in the future.

We have another concern regarding the conservation compliance in that some farmers may be unable to attain the 1995 deadline for having the conservation plan in place. Some plans may require extensive land treatment or some new piece of machinery that could place a financial hardship on the farmer. New equipment needing to be purchased needs some time and planning to get those kinds of things in place.

The swampbuster provisions of the Food Security Act of 1985 is causing a great deal of concern and frustration on the part of Indiana farmers at present. There are problems of identifying wetlands. We have reports from farmers who feel the identification criteria are not being applied consistently from county to county within our State, and if someone doesn't make an appeal, then their identity is locked in and they have no future alternatives, and that's a real problem. Farmers are not aware of all of the provisions and the compliance that they're going to have to go through.

Senators Lugar and Quayle have been very helpful. They held a series of meetings around the State last winter for farmers on the sodbuster and swampbuster provisions of the farm bill and to encourage farmers to meet with SCS people to get this job done.

It's like many things, it takes time. Sometimes more time than we at first may plan, and I'd say that is something that we just have so many farmers that still don't realize all of the requirements that are going to be made of them.

In some cases, we feel, too, that the swampbuster rules are very strict in severely limiting drainage of wetlands. In some cases landowners could greatly improve the efficiency of field operations if they were allowed to drain small wetland areas, and that's been addressed earlier here today. We urge the consideration of allowing

mitigating wetlands be constructed by the landowner in another location on the farm in return for removing a wetland for improved field operations.

Indiana has a lot of its soils that require drainage. If we're not allowed or we're not able to maintain the drainage systems and keep these drainage systems up to date, we're going to be in trouble. You can find a small area that may have been drained in the past. That drain breaks down and we are not allowed to fix it. Then we have problems in managing our farms efficiently.

If we could find some way of mitigating and being able to repair and keep that land in production that has traditionally been in production and move over here to another area and put equal land into that part of the program, it would be very helpful to us.

Another aspect of the program is tree planting on Conservation Reserve acres is a part of the program that has very limited attraction for Indiana farmers as compared to farmers in the Southeastern States. The difference being that hardwood species grown in Indiana require 50 to 60 years from planting to harvest while the Southern Pine growing region is ready for harvest after about 20 years. Lengthening the contracts for land planning to hardwoods to 15 or 20 years would overcome part of this imbalance and would, we believe, result in much greater acceptance of tree planting.

Regarding wetlands conservation, the Indiana Farm Bureau also believes that a sustained cropping history should constitute an exemption to swampbuster. Of course, we fully support efforts to protect wetlands, but we believe that land that has a history of being planted to crops should not be covered by swampbuster. Including in swampbuster land that has a cropping history does not seem, in our view, to further the purpose of the act.

We have as farmers a deep commitment to soil conservation. We support the intent of the conservation provisions of the Food Security Act of 1985. As with any new program, adjustments are often needed to make the program run effectively. The suggestions we offer here are those we believe will help achieve that goal.

Thank you for the opportunity to comment, Mr. Chairman.

[The prepared statement and responses to questions submitted by Senator Conrad of Mr. Henderson follow:]

STATEMENT OF

DONALD E. HENDERSON
VICE PRESIDENT, INDIANA FARM BUREAU, INC.
TO
SENATE AGRICULTURAL COMMITTEE
SUBCOMMITTEE ON CONSERVATION
AND
FORESTRY

MARCH 24, 1988

Indiana Farm Bureau, Inc., is a general farm organization with organized county Farm Bureaus in each county of the state. Indiana Farm Bureau members are producers of a wide variety of field crops, horticultural crops and livestock. Our members fully recognize the vital need to protect our productive soil resource, the most basic resource in producing food for our nation.

Our members, at their most recent convention, adopted the following policy position regarding soil conservation:

Farm Bureau strongly supports soil conservation programs at the federal, state and local levels. A rich productive land resource is vital to the well-being of all citizens. We believe the individual landowner has a responsibility to reduce erosion from wind and water to minimum levels.

We support the goals and adequate funding of the state program to reduce erosion on all land to its "tolerable limit" or below by 2000 ("T by 2000").

We urge farmers to meet with county ASCS and SCS officials soon to see how "swampbuster," "sodbuster" and "conservation compliance" provisions may affect them. Landowners and operators should have local input into developing acceptable erosion control standards. These standards must take into consideration the economic impact and practicality of recommended measures as they affect the total farm operation.

With this policy as background, following are more specific comments on soil conservation programs:

The conservation compliance provisions of the 1985 Food Security Act are getting much attention in Indiana at the present time. Most farmers have been informed by USDA personnel of highly erodible lands that may occur on their farm. Soil Conservation Service personnel feel they can meet the 1990 planning requirements by concentrating staff efforts to this program.

Indiana's "T by 2000" program is a state effort to reduce erosion on all lands to an acceptable level by the year 2000. Legislation was passed in 1987, with Indiana Farm Bureau's support, to provide dedicated funding at the rate of about \$3.5 million per year. This program has provided state staff and cost-share funds that compliment USDA programs.

One concern Farm Bureau has expressed is that erosion reduction practices prescribed by the SCS Field Office Technical Guide fail to take into account economic considerations of the farmer. We are pleased to see USDA is responding to these concerns by organizing local committees that may modify the FOTG in response to local conditions and economic considerations within certain constraints. We applaud these efforts.

We have encountered problems in some counties with inaccuracies in land ownership and tenant records at the ASCS offices.

An item of concern is that as SCS staff devote their time to meeting the requirements of conservation compliance other more traditional services are left undone. Such things as pond construction planning assistance, entire farm conservation plans and assistance to non-agricultural groups such as county planning agencies are reduced or dropped entirely.

A final concern regarding conservation compliance is that some farmers may be unable to attain the 1995 deadline for having the conservation plan in place. Some plans may require extensive land treatment or some new pieces of machinery that could place a financial hardship on the farmer.

The swampbuster provisions of the 1985 Food Security Act is causing great concern and frustration on the part of Indiana farmers. There are problems of identifying "wetlands". We hear reports from farmers who feel the identification criteria are not being applied consistently from county to county.

Much of Indiana's cropland requires artificial drainage systems to drain excess water. These systems require constant maintenance if they are to operate properly. About two-thirds of the soil associations in Indiana need artificial drainage systems to sustain high levels of productivity. Swampbuster rules must accommodate drain system maintenance. There is concern among farmers that they are not allowed to properly maintain drainage systems.

Swampbuster rules are very strict to severely limit drainage of wetlands. In some cases landowners could greatly improve the efficiency of field operations, if they were allowed to drain small wetland areas. We urge consideration of allowing mitigating wetlands be constructed by the landowner in another location on the farm in return for removing a wetland for improved field operations.

The conservation reserve program, a 10-year set aside of highly erosive lands, has not met the national goals in Indiana. 187,800 acres are contracted as of the close of 1987. This represents about 8.5 percent of the acres deemed eligible by SCS. Slightly over 22 percent of the nationally eligible acres have been contracted by landowners. It would appear the annual rates offered for conservation reserve contracts are simply too low in light of alternatives open to Indiana farmers over the next ten years.

Tree planting on conservation reserve acres is a part of the program that has very limited attraction for Indiana farmers as com-

pared to farmers in southeastern states. The difference being that hardwood species grown in Indiana require 50 to 60 years from planting to harvest while the southern pine growing region is ready for harvest after about 20 years. Lengthening the contracts for land planting to hardwoods to 15 or 20 years would overcome part of this imbalance and would, we believe, result in much greater acceptance of tree planting.

Regarding wetlands conservation, the Indiana Farm Bureau also believes that a sustained cropping history should constitute an exemption to swampbuster. Of course, we fully support efforts to protect wetlands, but we believe that land that has a history of being planted to crops should not be covered by swampbuster. Including in swampbuster land that has a cropping history does not seem, in our view, to further the purposes of the Act.

Indiana Farm Bureau members have a deep commitment to soil conservation. We support the intent of the conservation provisions of the 1985 Food Security Act. As with any new program adjustments are often needed to make the program run effectively. The suggestions we offer here are those we believe will help achieve that goal.

Thank you for the opportunity to comment.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

JOHN MELCHER, MONTANA
DAVID H. PETER, ARKANSAS
DAVID L. BUREN, OKLAHOMA
HOWELL HEFLIN, ALABAMA
TOM HARKIN, IOWA
KENT CONRAD, NORTH DAKOTA
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United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510-8000

April 7, 1988

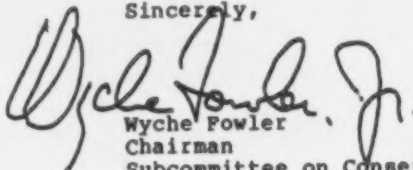
Mr. Don Henderson
Vice President
Indiana Farm Bureau
130 East Washington Street
P.O. Box 1290
Indianapolis, Indiana 46206

Dear Mr. Henderson:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
Chairman
Subcommittee on Conservation and
Forestry

Additional questions for MR. DON HENDERSON, INDIANA
FARM BUREAU, submitted by Senator Conrad

1. Do you think that farmers in your area are generally supportive of wetland preservation? Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland?
2. In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.
3. What differences have you observed in the implementation of the swampbuster and sodbuster law in North Dakota compared with other states?
4. What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?
5. In your opinion, are local USDA officials reluctant to impose a severe penalty--loss of all federal farm program benefits--if they felt that a swampbuster or sodbuster violation was minor or unintended?

Indiana Farm Bureau, Inc.

130 East Washington Street Post Office Box 1290 Indianapolis, Indiana 46206

ADMINISTRATION

317/263-7861

DEPARTMENTS

COMMODITY

317/263-7834

EDUCATION

317/263-7842

INFORMATION

PUBLIC RELATIONS

317/263-7819

LEGISLATIVE

317/263-7812

NATIONAL AFFAIRS

317/263-7845

NATURAL RESOURCES

317/263-7846

ORGANIZATION

317/263-7815

WOMEN'S

317/263-7830

April 27, 1988

Mr. Wyche Fowler
Chairman
Subcommittee on Conservation
and Forestry
328 Russell Senate Office Bldg.
Washington, D. C. 20510-6000

Dear Mr. Fowler:

Thank you for your letter of April 7th regarding the hearing on March 24, 1988. My apologies for this late reply.

Your questions:

1. Do you think that farmers in your area are generally supportive of wetland preservation? Do they support idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland?

Answer: Yes, but not land that has been under cultivation in the past.

2. In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.

Answer: It has been and is a nightmare for farmers and SCS personnel when prior converted wetlands fall under the same provisions.

3. What differences have you observed in the implementation of the swampbuster and sodbuster law in North Dakota compared with other states?

Answer: I do not have information on these differences, if there are any.

4. What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?

Mr. Wyche Fowler, Chairman
April 27, 1988

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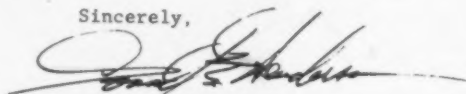
Answer: Should only apply to land that has been drained.

5. In your opinion, are local USDA officials reluctant to impose a severe penalty -- loss of all federal farm program benefits -- if they felt that a swampbuster or sodbuster violation was minor or unintended?

Answer: No.

Thank you very much.

Sincerely,



Donald E. Henderson
Vice President

DEH:jae

Senator FOWLER. Do you have any estimate on how much acreage in Indiana we're talking about if we enacted an exemption for that land that has been cropped in your State?

Mr. HENDERSON. No, sir, I guess I don't have at this time. I could certainly get those figures, I know, without any problem.

Senator FOWLER. Just a ballpark figure to try to figure out what we're talking about. We had a big debate, as you heard this morning, on what we're talking about in North Dakota, but we ought to look at a couple of other States and see.

Mr. HENDERSON. All right. We'll get those figures for you.

[The material was subsequently received and follows:]

In response to Senator Fowler's question: There are approximately 5½ million acres which are soils classified as hydric soils by SCS. Of that acreage there is approximately 200,000 acres that we feel should be exempted. These are acres that have been drained and farmed for many years and may have a small wet spot somewhere in the field.

In addition there is another 250,000 acres of wetlands where water stands most of the year. SCS says that some 40,000 acres of this land could be drained and farmed. At this time it is our feeling that all of this land should remain as wetland.

Senator FOWLER. Thank you.

I'll let you catch your plane.

**STATEMENT OF JIM NICHOLS, COMMISSIONER OF AGRICULTURE,
STATE OF MINNESOTA, REPRESENTING AMERICAN AGRICULTURE
MOVEMENT, INC., THE NATIONAL SAVE THE FAMILY
FARM COALITION, AND THE LEAGUE OF RURAL VOTERS, ST.
PAUL, MN**

Mr. NICHOLS. Mr. Chairman, thank you for the opportunity to testify here for my own State as commissioner of agriculture and for the American Agriculture Movement, National Save the Family Farm Coalition, and the League of Rural Voters.

I want to testify today in support of Senator Nunn's bill [S. 1521]. I think it's excellent legislation, far-reaching legislation, and also generally in support of the Conservation Reserve Program which has been an excellent program in my State of Minnesota.

I'm going to mention a few things that I would like to see perhaps changed to improve the Conservation Reserve Program but I don't mean that as a general criticism. I just think there are some things we could do to improve that. Obviously, the CRP has been a very cost-effective program. I can remember lobbying here in Washington 5 years ago pointing out that 30-million-acre program would cost \$1.5 billion at \$50 an acre.

Senator Nunn's figures especially intrigue me. It's actually saving the taxpayers money, and I think he's correct. It's very hard, as you know, to come up with programs that reduce surplus production, protect our ground water, eliminate soil erosion that the farmers like and save money. There aren't many chances you get to have a program like this. It's really been a good program.

But here are a few things that have been done that could be improved. Before I start, I just want to make one comment. I'm going to paraphrase my remarks here in the interest of time about swampbuster. We have had problems with swampbuster in Minnesota as they have in North Dakota. My neighbor Kent Conrad said it very well, and I won't go into that a great deal.

But it's been not with the law itself but the way the law has been administered, and I submit to you, Mr. Chairman, that when the delegation here from USDA said they'd been working for a long time and only recently had decided to make some changes but nobody in the county had heard about it yet, I suspect they made that change on the way to the hearing this morning.

I'm glad to see that they did that, and I'm glad you had the hearing because progress is progress, but we've had farmers who have appealed this all the way to Washington, and we're talking about land that has always been farmed, and what they're really doing, and the gentleman said it, he said, well, we're going to force them to wait for 2 weeks before they can put that land into production, plant the crop.

That's ridiculous. It's a delaying tactic. It's not going to help the wildlife. It doesn't keep the land out of production. It really doesn't accomplish anything other than through bureaucratic bungling, irritate the farmers. It certainly doesn't fulfill the intent of the law.

Senator Conrad, you said exactly what I would have said on the swampbuster, and you said it very well. So I'm not going to go on with that, but we have the same problems in Minnesota, and I want to thank you for that.

With the CRP, I'm going to mention a couple of things that perhaps could be done to expand it and a few problems. There have been some problems with the transfer to CRP payments where the renter has gone into the program and then ended up forced off the land, and of course, the landowner has that for the next 8 or 9 years.

One general thing that I've thought, I think that the 25 percent limitation by county was very much needed, and there's an exception in here for the Secretary, but in the case of farmers who are absentee landowners, they put all of the farm into the program, and the money never comes into the county, any of it.

Perhaps in those cases, we should consider some kind of a limitation on the farm. Perhaps 50 percent of the farm. At least some of the land is still in production, some money still remains in the county.

One of the flaws of the old Soil Bank Program, and the rules weren't as good then, was that it allowed investors to buy land, put it into the program for 10 years, and they didn't even live in the county, sometimes not even in the State.

We have a desperate need, as you know, to keep money in the county to keep our rural communities alive. So a 50 percent limitation by farm would perhaps have helped some of that.

Now, a few of the flaws of the program. The CRP bid and bid pooling arrangements, I think, have hurt it more than anything; and what you did in the last session was try to make some criteria that had to reflect local cash rents.

Mr. Chairman, you make your payments—have done so for a very long time—based on your base acreage, the normal crop acreage, your county average yield or your proven yield. That's how I get my deficiency payment. In most cases that's how all my payments are determined. It's an excellent system. It has evolved over a period of about 30 years, and it's fair.

Why this program decided to be administered on this huge bid pool which in no way reflected local county conditions or certainly not conditions farm to farm is beyond me. I believe, Mr. Chairman, there were those in USDA who thought they could save money, and when you set the maximum bid you will accept, what you're hoping is that the farmers are dumb enough to bid less than that, and you think you're going to take advantage of these rules.

Let me tell you how it works in the real world. In the first bid you didn't have any participation. The reason is we didn't know what would be accepted. We had to send a few lambs to slaughter, and they went. Once we found out the highest bid that was accepted in my county, that's what we all bid for the next five bids.

So the maximum bid became the minimum bid, and in my county, Mr. Chairman, it's \$70 an acre. That's good. I bid some land in because my land rolls. I couldn't rent it for \$70 an acre, but they group me in with eight counties along the Iowa border where probably \$70 isn't enough. That whole bid pool hurt the system.

I happen to live just 2 miles from South Dakota. Two miles away from me the maximum bid is \$50 an acre. As it happens in that county, it's better land. So in my home county, 25 percent of the farmland is already in the CRP because the bid is too high which costs the taxpayers money. In the neighboring county, the percentage is very small because the bid is too low.

That's a problem of administration, and why they ever left that system of county average yield of proven yield is beyond me. You had a very good system and you walked away from it. I don't know.

Then I want to talk a little bit about the 2T and the 3T criteria. I argued for a long time don't go with 3T. It's too high. 2T would have been a more reasonable criteria. When you went to 3T, enough land didn't qualify so you had to limit participation. To expand participation, they did essentially in the beginning that if two-thirds of your field were eligible, you could put the whole field in.

Well, if you have a 10-acre field, that probably makes sense, but if you have a 100-acre field, you're putting 33 acres into it that probably should never be in. This is good farmland.

Now, it's even worse on trees. If one-third qualifies, the other two-thirds of the fields can qualify, and even worse on trees. I think it's a great program for your State, and it's also a great program for the taxpayers because they get 10 years where the Government has to pay and for the next 10 years you're farmers don't get a payment, but then they get to harvest the trees. This is a 10-year freely for the Government in a State like yours. It's not quite so good in my State.

One of the things they could have done from the beginning was had a 100 percent cost share in planting trees. Why they didn't do it is beyond me, but they did not. I mean, to encourage tree planting, and then maybe they've decided to accept that to pay 100 percent cost sharing. It doesn't cost more money to plant trees. It would encourage more farmers to plant trees in my State as well as yours.

But, unfortunately, now the criteria is now 2T if you plant it to trees. That's ridiculous. The land that is less erodible than the 3T

land goes into trees. If you ever need to plow that up 10 years from now, 20 years from now, you have to go and plow up the most fragile land, and the stuff that is less fragile is under trees.

Again, it was attempting to get land under CRP that should have gone under it in the first place. If they had started with the 2T criteria, stuck with it all the way; from the beginning if the farmers knew what would be paid if a fair price were paid in every county, not by the bid pool, you would have had more than enough participation.

But the simple administration of the program with the bid pool, the 3T as opposed to 2T has consistently reduced participation, and in the first bid, Mr. Chairman, they were very aggressive in turning land down. They've now since accepted land that they turned down in the first bid and gave the farmer more money. USDA has not done the world's greatest job of administering this program despite Mr. Nunn's comments in praising them. I think it could be better implemented.

[The prepared statement and responses to Senator Conrad's questions of Mr. Nichols follow:]

TESTIMONY OF
JIM NICHOLS
COMMISSIONER OF AGRICULTURE
STATE OF MINNESOTA
before the
SUBCOMMITTEE ON CONSERVATION AND FORESTRY
SENATE AGRICULTURE COMMITTEE

Thursday, March 24, 1988

I appreciate the opportunity to appear before this Subcommittee today to present my views concerning the Conservation Reserve Program and S. 1521, the proposal by Sen. Sam Nunn and others to increase the acreage of the CRP. I am pleased to indicate that the testimony I offer today also represents the views of the American Agriculture Movement, Inc; the National Save the Family Farm Coalition; and the League of Rural Voters.

CRP PROGRAM A SUCCESS / SHOULD BE EXPANDED

Overall the Conservation Reserve Program has been an unquestionable success. It has succeeded in the primary goal of beginning to remove from agricultural production the most environmentally fragile land. This law has demonstrated the potential for achieving meaningful legislative programs when farmers, environmentalists and others sit down together to address a problem. I, along with those family farm organizations which I speak for today, support S. 1521, the proposal to further expand the program.

Nonetheless, there are a few areas where the CRP program can and should be fine-tuned to more effectively achieve the purposes intended by Congress. I will briefly address a few of those.

PENALTIES IN PROPORTION TO THE OFFENSE

One of the problems with the current program is that any violation of the terms of the Act requires that the farmer lose his eligibility for all farm program benefits. While this level of response is appropriate in cases involving gross, repeated and intentional violations, it is certainly not appropriate in all situations. There must be some discretion for attaching appropriate penalties for less serious violations which will effectively serve as a deterrent to prohibited conduct, but which will not totally destroy a farmer. For example, the Act might require the violator to forfeit any profit made from the violation, and return the land, as nearly as possible, to the original condition before the violation.

PAGE TWO

I do not make this suggestion in an attempt to undermine the valid environmental goals of the Act. Rather it is to enlarge the range of penalties available to include penalties stiff enough to assure that farmers will not repeatedly or casually ignore the provisions, but not so out of proportion to the offense as to destroy a farmer for a minor or unintentional violation.

EXPAND ELIGIBILITY STANDARDS

Another needed amendment to the current program is one to expand the eligibility standards for enrolling land in the program to include any land taken out of production by producers to meet the groundwater safety provisions of FIFRA or other environmental laws.

The family farm organizations that I speak for today have been working with other interested parties to support strong provisions protecting groundwater from pesticide contamination. Farmers and rural citizens depend upon ground water for their drinking water, and it is imperative that we pass strong and effective measures to assure our rural citizens a continuing source of safe drinking water. However, despite sound conservation and land management practices, there will be some situations where, due to particular geological conditions of the land or other special conditions, it will be necessary for a farmer to remove some of his land from production to protect the drinking water of the community. In those rare instances, we believe the fair step would be to allow that producer to automatically enroll that acreage in the CRP. That would meet the legitimate environmental goals while still protecting the income of the individual farmer.

I would note that Sen. Nunn envisioned such a situation in S. 1521. On page eight of the bill, under the heading of Water Quality Pilot Program, provisions are made in Section (b)(2) for enrolling land in the program that "the Secretary finds, in consultation with State agricultural and resource agencies, to be associated with water quality problems stemming from the use of fertilizers and pesticides, drainage systems, Irrigation, and tillage practices." We would argue that the farmer who is forced to remove land from production to protect the environment from pesticide contamination should not have to qualify under any "pilot program". Rather, this land, if removed from production as a result of the provisions of FIFRA or other federal environmental laws, should automatically be eligible for enrollment.

Without such an amendment enlarging the terms of eligibility for enrollment, an individual farmer, even one who engages in sound environmental practices, would be forced to shoulder the financial burden of achieving safe groundwater, though the entire public benefits. In some situations, the farmer would be financially destroyed.

PAGE THREE

CLARIFICATIONS NEEDED FOR SWAMPBUSTER

I support wholeheartedly the provisions of CRP commonly known as "swampbuster". I believe the Congressional intent in including those provisions was to prohibit farmers from converting fragile wetlands into croplands. Unfortunately, I am aware of some situations where these provisions are being applied inappropriately to cover acreage that has long been productive land, but which in a particularly rainy season may develop small wet areas for a limited time. In those situations, where the farmer is doing nothing except farming the same land he has always farmed, and is not converting wetland, he should not be held to be in violation of the swampbuster provisions. As I understand the intent of Congress, it was not to remove land from production to create new or additional wetlands, but to protect that which already exists. It is fundamentally unfair to penalize the farmer in this situation, and serves no valid environmental purpose.

I understand that those who worked so hard to enact the swampbuster provisions are reluctant to see any changes in the program, for fear that the changes will serve as a vehicle for those who wish to weaken the underlying protections afforded. I want to assure the Committee that is not my purpose, nor that of the organizations I speak for today, in suggesting this minor clarification in the swampbuster provisions. Rather, we believe it is important to maintain strong provisions protecting our wetlands, while also treating farmers fairly.

THE TRANSFER OF CRP PAYMENTS

Another area that needs some fine-tuning concerns the transfer of rights to the annual CRP payments. Currently the farmer/producer who rents land often negotiates a split of CRP benefits with the absentee landowner when the land is enrolled in the program. Regrettably, there are instances where the absentee owner subsequently kicks the rentor off the land, and the entire CRP benefits are then transferred to the owner. This works an injustice to the rentor/producer, as well as hurting the local economy.

There are counties around the country where 50% or more of the entire CRP payments go out-of-county to absentee owners, doing significant damage to the local economy.

I would propose that when a farmer/producer who rents land that has been enrolled in CRP subsequently ends his rentor relationship with the owner, the absentee owner should be required to reapply anew for continuation in the program, subject to the usual three-year waiting period. In situations where the rentor agrees to and authorizes the transfer to a different rentor,

PAGE FOUR

the CRP agreement would automatically be continued, without the need to reapply and wait for three years for eligibility. This would protect the interests of the rentor/producer and help assure that a portion of the CRP payments remain flowing to the local economy.

A similar problem occasionally arises for financially distressed farmers who are told to enroll land in the program by their lenders to assure an adequate cash flow. Regrettably there are instances where the lender, taking advantage of the increased value of the newly enrolled land, then forecloses and sells it to a third party, and the CRP payments are again transferred to the new owner. If the new owner were subject to the usual three year eligibility requirement, absent a voluntary assignment from the prior owner or operator, this unfair practice by a few lenders could be curtailed.

Another suggestion might be to place a 50% cap on the portion of any one farm entitled to enrollment in the program by an absentee owner. Again, in most situations this would assure that at least half of the farm remain in production, with the income generated from that farm flowing into the local economy.

CRP BID AND BID POOLING ARRANGEMENTS

A final area which I believe this Subcommittee should examine is the process for bidding land into the program. Though the bidding process was originally selected to save program costs, I believe it has actually resulted in higher costs, and I know it has resulted in unnecessary inequities in the program.

After the first round of bids, most farmers in the area quickly learn the top price to be accepted. Thereafter, nearly everyone puts in the exact same bid at the highest price. One can hardly blame a struggling farmer for getting the top price available for his acreage, but the process results in higher program costs than might be necessary.

Further exacerbating the situation is the pooling process for accepting bids. By pooling bids for several counties, or even for whole states, bids are accepted on some land far in excess of the actual cash rental value, while other, more valuable land may be undervalued. For example, land in my home pooling area goes for \$70 per acre, while equally valuable land just 20 miles away, but across a county line and within a different pooling area, brings only \$50 per acre. The result is that farmers in the neighboring county are discouraged from participating in the program at all.

I believe there is a system already in place which would correct most of these inequities, and probably end up saving on overall program costs.

PAGE FIVE

Every farm has a history of acreage and yield — either county average or proven yield. It would appear that a system in which the CRP payment was based on a percentage of this yield would reflect more accurately the actual cash rental value of the land and represent a fairer way of determining compensation.

SUMMARY

Let me again reiterate my support for the CRP program, and for S. 1521, the proposal to increase the size of the program. I believe this is a valuable program and believe it is in the interest of American agriculture that the program be expanded. My attention to several problem areas is intended to suggest ways to improve the program and to make sure it is implemented fairly, relecting the original intent of Congress. I believe this program represents one of those achievements of which Congress should feel justifiably proud; it successfully serves the interests of both farmers and the environment.

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PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON
 AGRICULTURE, NUTRITION, AND FORESTRY
 WASHINGTON, DC 20510-6000

April 7, 1988

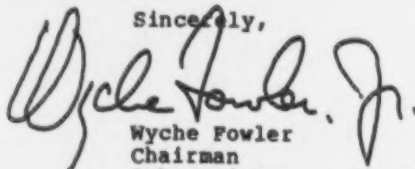
Mr. Jim Nichols
 Minnesota Commissioner of Agriculture
 90 West Plato Blvd.
 St. Paul, Minnesota 55107

Dear Mr. Nichols:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
 Chairman
 Subcommittee on Conservation and
 Forestry

Additional Questions for JIM NICHOLS, FARM GROUP
COALITION, submitted by Senator Conrad

1. Do you think that the farmers of Minnesota, and members of the groups you represented at the March 24 hearing, are generally supportive of wetland preservation? Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland?
2. Under what circumstances would the farmers you represented find it economically beneficial to convert wetlands to cropland? Would farmers be more inclined to help preserve wetlands on their property if they received some compensation from the government?
3. Would you be supportive of making certain wetlands eligible for the Conservation Reserve Program?
4. In your opinion, are local USDA officials reluctant to impose a severe penalty--loss of all federal farm program benefits--if they felt that a swampbuster or sodbuster violation was minor or unintended?



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STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

May 10, 1988

The Honorable Myche Fowler
United States Senate
204 Senate Russell Office Bldg.
Washington, D.C. 20510

Dear Senator Fowler:

Thank you for the opportunity to testify before the Committee on March 24, 1988, and your letter of April 7, 1988 with additional questions from the Committee members.

I have enclosed your questions with my answers for the hearing record as you requested.

Thank you again.

Sincerely,

MINNESOTA DEPARTMENT OF AGRICULTURE

A handwritten signature in cursive script that reads "Jim Nichols".

Jim Nichols
Commissioner

JN:jh



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Additional Questions for JIM NICHOLS, FARM GROUP
COALITION, submitted by Senator Conrad

1. Do you think that the farmers of Minnesota, and members of the groups you represented at the March 25 hearing, are generally supportive of wetland preservation? Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland? YES
2. Under what circumstances would the farmers you represented find it economically beneficial to convert wetlands to cropland? Would farmers be more inclined to help preserve wetlands on their property if they received some compensation from the government? YES
3. Would you be supportive of making certain wetlands eligible for the Conservation Reserve Program? YES
4. In your opinion, are local USDA officials reluctant to impose a severe penalty -- loss of all federal farm program benefits -- if they felt that a swampbuster or sodbuster violation was minor or unintended?

The application of penalties varies widely from county-to-county and even from farmer-to-farmer. It sometimes seems to be a decision based on personalities. Most local USDA officials seem to agree that the penalty is too severe.

Senator FOWLER. Those are some very helpful suggestions, Mr. Nichols, especially the 50 percent limitation on farm as a way of keeping that money home and in individual counties who have very serious problems with their tax bases and ought to be explored.

Let me ask Mr. Webster along that line. There was an article that you probably saw in the Atlanta papers, which was a big article a few weeks ago, seeming to suggest that many of the smaller towns in rural Georgia would be adversely affected by having so much land taken out of production and put into trees. What's your feeling about that?

Mr. WEBSTER. Senator, in our county, you know we are the largest agriculture county in the State of Georgia, and we have a lot of absentee landowners that do not understand the program. So therefore, they're going to come in and put a lot of land in our part of the country into the CRP Program, and it will hurt us if it goes beyond the 25 percent limit, and it could have adverse affect on the small towns.

I think we should have a balance, some balance there to keep from having too many acres going into the CRP from an individual county. Of course, I think you can go past the 25 percent if you will just only plant them in trees. This is the only thing that we have any problem with, of course.

Talking about 50 percent of the money going out of the county, that is a problem in our area because most of the land is owned by absentee landowners. All of us lost our land, and it's been bought by people outside of the county.

Senator FOWLER. Right. What are the alternatives given that situation in Georgia to the traditional pine plantations in our State?

Mr. WEBSTER. Well, that's a pretty hard question to answer. I think in talking about the \$45 limit, in our particular county \$20 to \$25 an acre land rent is probably a high average, and when you get to the place of \$45 an acre for 10 years, it's going to be in direct competition to the people that's left there to farm that land.

Of course, it's hard to turn down that, but we do have a problem with that. I don't know the answer to cutting it off at a certain point. I do think that the farmer that owns it or the person that owns it should have opportunity to say what that land will go into.

It would mean a big change in our part of the country to be able to choose what went on that land as a conservation practice.

Senator FOWLER. Yes, Commissioner Nichols.

Mr. NICHOLS. I just wanted to say one of the good things about Senator Nunn's bill is how he's tried to affect our water quality. We passed a very tough and far reaching water quality bill in Minnesota last session.

We have another program that's very similar to CRP. We call it reinvest in Minnesota, and we take permanent easements out on the land or a 10-year easement, and we use that for wetland restoration.

Our wetland that doesn't qualify under the current rules for CRP, and rightly so, may never qualify, but we want to restore those wetlands and protect our ground water. As a State we've spent about \$15 million taking that land out of production.

So we've tried to work in concert with CRP and it's turned out quite well for us and been a very good program to protect ground water as well.

Senator FOWLER. I have to run over to the Judiciary Committee for a few minutes and then I'll be back.

Senator CONRAD [presiding]. I wanted to just expand a bit on swampbuster and sodbuster with you, Jim. What do you get from your constituency in terms of the penalty provisions and whether or not it's reasonable to have maximum penalty for any infraction?

Mr. NICHOLS. Mr. Chairman, I didn't want to go into that because you said it very well. The drop dead clause is ridiculous, and there are very few occasions in any law where we have a penalty that severe for a minor infraction.

I think in every case of the law that the penalty should meet the violation, and it doesn't in this case, and the farmers are very concerned about that.

Senator CONRAD. You heard perhaps this morning the testimony of Milt Hertz, head of ASCS, that they would attempt to use the "failure to fully comply" provisions that are present in the administration's ability to deal with situations like this one. In your estimation, would that be a significant help in trying to moderate the very draconian penalty that's present?

Mr. NICHOLS. Well, clearly it would, and I was interested to hear Mr. Hertz say that in some cases they had tried to reach an accommodation, but in my State, we've had farmers who've appealed it all the way to Washington, and they've been very hard to deal with.

So when I see him here before the committee, it's not exactly the same gentleman that I tend to meet with the farmer who has a problem.

Senator CONRAD. Let me ask this. We will have testimony that will be presented to us momentarily that indicates there are 3,000 violations alleged in the State of Minnesota. Do you have any knowledge of the number of violations pending in Minnesota and do you have any sense of how reasonable that number is?

Mr. NICHOLS. Well, I meet very often with the State ASCS director, who is a friend and colleague of mine, and he's indicated those numbers to me. He's said it's a very, very high number of violations. I've asked them what they intend to do, and he's never quite answered that question.

Whether the measures will be draconian or whether they're going to be reasonable, I don't know. I think because of the hearings that are going on here, they will be more reasonable to deal with in the future. But clearly, we've got a lot of violations, Mr. Chairman.

Senator CONRAD. One other point I wanted to elicit from you. In terms of the question of how the notion of wetlands, swampbuster, sodbuster was sold. Have you had any chance to review the record in that regard?

Mr. NICHOLS. Yes, I have, Mr. Chairman, and reading the law—I haven't gone through the record as you have—to me the intent always was not to put new land into production for swampbuster and sodbuster. I don't think the intent was to deprive farmers from

the income that they had received for land that they had farmed for 50, 75, 100 years.

This is where the problem is. Nobody disagrees with the intent of trying to put new land into production, but we're not talking about wetland that I think would sustain duck population. What we've got is wetland that for a couple weeks in the spring you can't farm.

That's exactly what they said they intend to not let them drain it as Milton Hertz said. Let them wait a couple weeks until it dries out. Well, that's ridiculous. You're not going to have ducks nesting on there in 2 weeks, and they're not even going to spend any time there.

I don't think that the figures they gave about the duck population are true. We're talking about a more permanent pool of water here, not about these small pieces of wetland that the farmers have always farmed.

It's depriving them of income. It's unfair. If you insist on doing that, then they should at least be allowed to put that into some kind of a program such as the CRP, but those are exactly the lands that won't qualify. So, in Minnesota, we started our reinvest in Minnesota program and we're taking those lands in, so the farmer can get some income from that land.

I think he did a good job of pointing out and he answered the question that, yes, that was the congressional intent, but then when he went the next step further, they still intend to apply the rules in such a way the farmer can't drain it.

They're clearly going against the congressional intent by their statements here this morning.

Senator CONRAD. I think we have a need to get that feeling on the record so that as we sort this thing out, we have a chance to really communicate with each other. I was very pleased that some of the environmental groups this morning evidenced a willingness to come out and look at what's happening on the ground.

I think we would clear up an awful lot of trouble if we would get out there. It's the old 80-20 rule that is with us in spades that 20 percent of the situation is causing 80 percent of the problem. I think it's maybe an 80-10 rule where 10 percent of the situation is causing 80 percent of the problem. We could reasonably deal with each other and sweep away a lot of this difficulty.

Let me on behalf of the committee thank both of you for being here. We very much appreciate it.

At this point, I will enter into the record written questions on behalf of Senator Lugar.¹ These are questions for Wilson Scaling of the SCS, and we'll enter those into the record at this time.

[The questions of Senator Lugar follow:]

QUESTIONS FOR WILSON SCALING OF SCS

QUESTION 1

Mr. Scaling, I have a question regarding misinformation. As I understand it, if, for example, a farmer had asked SCS in January 1986 whether a field which had been in pasture for many years was or was not highly erodible, local SCS personnel told the farmer that the land was not highly erodible, the farmer planted the field to a commodity crop and then SCS redetermined that the field was indeed highly

¹ See pp. 91 to 92 for the responses of Wilson Scaling to Senator Lugar.

erodible, the farmer would not lose his benefits because he had relied on the initial SCS determination. Is that correct?

If so, if we look at the same fact situation that I just described except that the farmer wanted to install a new tile drain and had asked SCS if the field were a wetland, my understanding is that we would come to a different result.

My understanding is that reliance on misinformation from USDA regarding wetlands does not exempt the farmer from the penalties of the Conservation Title. As I understand it, the farmer would lose all of his USDA benefits even though he consulted USDA personnel and was given incorrect information.

Mr. Scaling, is there anything you can do to correct this situation?

QUESTION 2

I have another question for Mr. Scaling. My understanding is that, once a farmer receives notice that some part of his farm contains wetlands, the farmer has 15 days to appeal that determination. Many farmers in my state have complained that the 15-day period is too short and that should a farmer neglect to appeal in that period, the farmer effectively is locked into that determination forever and may never drain that land even if he believes that SCS was incorrect in classifying that land as a wetland. Can you give me the justification for that 15-day period or is there some possibility that this period can be lengthened or reviewed at some later date?

Senator CONRAD. In addition, we'll take this opportunity to enter into the record an article that I referred to earlier, entitled the "Ecological Distribution of Breeding Waterfowl Populations in North Dakota." We will put that into the record. Also I will enter into the record at this time a letter from the Federal Crop Insurance Corporation, the Office of the Manager, on the question of how they will handle penalties.¹

So we will enter all those items into the record at this point.

[The material follows:]

¹ A synopsis of points made in "Ecological Distribution of Breeding Waterfowl Populations in North Dakota" can be found on p. 157.

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ECOLOGICAL DISTRIBUTION OF BREEDING WATERFOWL POPULATIONS IN NORTH DAKOTA

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Abstract: The distribution of breeding waterfowl populations on various wetland habitat types was investigated in North Dakota during 1967-69. Data were obtained by stratified random sampling techniques. The total wetland acreage in North Dakota was estimated to be about 3.2 million acres. Natural basin wetlands comprised about 77 percent of the acreage and 91 percent of the number of wetlands in the state and were utilized by about 78 percent of the state's breeding duck population. Among the four biotic regions of the state, numerical and areal composition of wetlands varied considerably. Natural basin wetlands varied from a low of about 4 percent of total wetland acreage in the Southwestern Slope Region to a high of 93 percent in the Prairie Pothole Region. About 84 percent of the statewide duck population occurred in the Prairie Pothole Region. Within the Prairie Pothole Region, seasonal (Class III) ponds comprised 36 and 23 percent, respectively, of the total acreage and number of wetlands, and semipermanent (Class IV) ponds and lakes comprised 18 and 3 percent, respectively, of these totals. Agriculture has had drastic effects on the wetlands in this region as evidenced by the fact that natural basin wetlands with tilled bottom soils (chiefly Class II and Class III wetlands) comprised about 29 percent of area but 52 percent of numbers of all wetlands. In the Prairie Pothole Region, seasonal ponds and semipermanent ponds and lakes were utilized by about 48 and 27 percent, respectively, of the total breeding ducks. Optimum environmental conditions for breeding dabbling ducks were present during years when large numbers and acreages of seasonal (Class III) pond basins contained surface water. Semipermanent (Class IV) ponds and lakes were the principal habitats for breeding diving ducks, and were also important to dabbling ducks, particularly during dry years.

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The paramount importance of the glaciated prairie region as a breeding ground for North American waterfowl has been well established. This region contains innumerable shallow wetlands with discrete basins that are especially attractive to various species of dabbling and diving ducks during the nesting season. Unfortunately, the natural ecosystems within this region have been drastically altered by intensive agricultural development during the past 75 years. Since these environmental changes are continuing at an unabated rate, it is essential that their impact on the distribution, population densities, and ecology of breeding waterfowl should be monitored.

The primary purpose of this report is to document the ecological distribution of populations of breeding waterfowl on prairie wetlands in North Dakota from 1967 through 1969 so as to provide a basis for

evaluating effects of future environmental changes. The data are based on counts of breeding duck pairs on various types of wetland within sample units that were selected by stratified random sampling techniques. The sample units were distributed within strata that were differentiated by biogeographical, physiographical, and ecological factors (Stewart and Kantrud 1972).

The habitats included are the major classes of natural basin wetlands (Stewart and Kantrud 1971), fluvial wetlands, and various man-made wetlands. The permanence of surface water in five classes of natural basin wetlands varies in degree and is correlated with differences in the vegetation of the central zones of the wetlands. These classes, listed in order of increasing permanence, are: ephemeral (Class I) ponds, temporary (Class II) ponds, sea-



Fig. 1. Biotic regions and subregions of North Dakota.

sonal (Class III) ponds, semipermanent (Class IV) ponds and lakes, and permanent (Class V) ponds and lakes. In addition, alkali (Class VI) ponds and lakes are characterized by the intermittent occur-

rence of shallow, highly saline surface water; and fen (Class VII) ponds represent basin wetlands in which alkaline ground water seeps to the surface. Fluvial wetlands include permanent and intermittent streams and their associated oxbows. Man-made wetlands are represented by stock ponds, dugouts, large shallow stream impoundments, reservoirs, road ditches, drainage channels, and sewage lagoons.

We wish to thank D. Alan Davenport for developing computer programs to process the data from this study. Grateful acknowledgment is made to personnel (32 in number) from the U.S. Bureau of Sport Fisheries and Wildlife, U.S. Soil Conservation Service, and North Dakota Game and Fish Department for their assistance with waterfowl censuses during 1969. A special thanks also is due William C. Bair and Paul F. Springer for their help in coordinating work schedules of many of the biologists

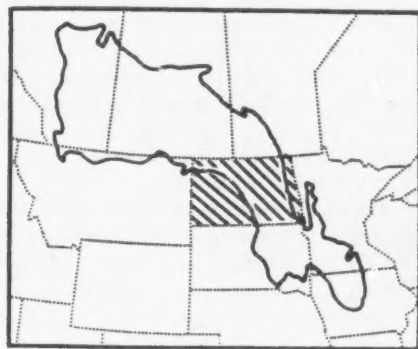


Fig. 2. Relationship of North Dakota to prairie pothole area of central North America.

who participated in the field work that year.

METHODS

These investigations were statewide in 1967, but were restricted to the Prairie Pothole Region (Figs. 1 and 2) in 1968 and 1969. The field work in 1967 and 1968 was conducted by the authors without assistants. In 1969, a cooperative program was instituted in which many federal and state biologists assisted in the census of waterfowl on various assigned portions of the region.

The criteria involved in the biotic stratification of the state, the random methods employed for selection of sample units, and the field techniques utilized in censusing waterfowl and other birds have been described previously (Stewart and Kantrud 1972).

During the waterfowl censuses, our interpretation of segregated pairs, lone males, and mixed flocks of both sexes was in general agreement with the guidelines established by Hammond (1969). Occasionally, we found that the number of lone females on a given sample unit exceeded the number of males unaccompanied by females. In such a case, each "excess" lone female was considered to represent an indicated pair. Flocks of male mallards (*Anas platyrhynchos*) or pintails (*Anas acuta*) containing as many as 10 individuals were sometimes observed during principal breeding periods. In these cases each male was considered to indicate a pair, as recommended by Dzubin (1969).

Censuses of all ducks were conducted each year during the principal breeding periods. The breeding period for each species differed slightly from year to year because of variable climatic conditions. Periods also varied considerably among the various waterfowl species. The mallard and

pintail, both early-nesting species, were censused from 24 April to 7 June 1967, and from 23 April to 7 June 1968. Mid-nesting species, including the gadwall (*Anas strepera*), green-winged teal (*Anas carolinensis*), blue-winged teal (*Anas discors*), shoveler (*Spatula clypeata*), American widgeon (*Mareca americana*), ring-necked duck (*Aythya collaris*), and canvasback (*Aythya valisineria*), were censused from 14 May to 10 July 1967, and from 15 May to 15 July 1968. Late-nesting species, including the redhead (*Aythya americana*), lesser scaup (*Aythya affinis*), and ruddy duck (*Oxyura jamaicensis*) were censused from 22 May to 19 July 1967, and from 20 May to 23 July 1968.

In 1969, because of the limited time available for cooperation in census work by other investigators, the censuses of all ducks were conducted during the overlapping portion of the principal breeding periods for early-nesting, mid-nesting, and late-nesting species. This composite period extended from 20 May to 10 June.

The statewide sample of breeding habitat in 1967 consisted of 130 legal quarter sections (160 acres, or 0.5 mile $\times$ 0.5 mile). The number of sample units allocated to each stratum was in proportion to its relative size. Sample units were distributed among the biotic regions and subregions of the state (Fig. 1) as follows: Agassiz Lake Plain—13; Northeastern Drift Plain—17; Southern Drift Plain—18; Northwestern Drift Plain—15; Missouri Coteau—18; Coteau Slope—15; Missouri Slope—21; and Little Missouri Slope—13.

Variance estimates (Cochran 1963), obtained from the data in 1967, were used as an aid to determine adequate sample size for the survey of the Prairie Pothole Region in 1968. Censuses of waterfowl were conducted on 194 randomly selected quarter sections. These included 81 located on the Missouri Coteau and 113 on the Drift Plain.

Within the Drift Plain the number of sample units allocated to each biotic subdivision was in proportion to its size: 35 on the Northeastern Drift Plain, 42 on the Southern Drift Plain, and 36 on the Northwestern Drift Plain.

A cluster sampling technique was utilized in 1969 in an attempt to decrease the proportion of zero observations, thus reducing skewness and permitting more reliable estimates of waterfowl numbers. Each cluster consisted of four quarter sections that formed the corners of a square with dimensions of 2×2 miles. Because cooperating biologists were not always available, the degree of coverage differed considerably among the various subregions of the Prairie Pothole Region. Censuses were conducted on 83 clusters containing 332 quarter-section units. The clusters were randomly distributed among the four subregions of the Prairie Pothole Region (Fig. 1) as follows: 40 on the Missouri Coteau, 23 on the Southern Drift Plain, 10 on the Northeastern Drift Plain, and 10 on the Northwestern Drift Plain.

A survey of wetland habitat was completed in conjunction with the censuses of waterfowl on the sample units each year. Type and acreage of every wetland was determined. Acreages of most wetlands were estimated through visual appraisals and pacing although, in the case of large wetlands, topographic maps were used. If a portion of a wetland extended outside the boundary of a sample unit, only the acreage within the sample unit was recorded. Data for both wetlands and waterfowl were weighted in order to adjust for differences in density of sample units.

RESULTS

Waterfowl Breeding Populations

In 1967, the census of ducks on 130 randomly selected quarter-section sample

units throughout the state yielded a total of 1,037 breeding pairs. On the basis of strata mean densities the total waterfowl breeding population for North Dakota was estimated to be 2,281,000 pairs with a 95 percent Highest Probability Density (HPD) region of 1,703,000 to 2,859,000 pairs (Stewart and Kantrud 1972).

Breeding waterfowl populations were of regular occurrence in the four major biotic regions in North Dakota. These are designated as the Agassiz Lake Plain Region, the Prairie Pothole Region, the Coteau Slope Region, and the Southwestern Slope Region (Fig. 1). Census data from the 1967 statewide study clearly show that breeding populations were largely concentrated in the Prairie Pothole Region. About 84 percent of the total breeding pairs were found in this region which covers 51.5 percent of the state area. Elsewhere, about 10 percent of the total population occurred in the Coteau Slope Region (11.6 percent of the state area), 4 percent in the Southwestern Slope Region (26.9 percent of the state area), and only 2 percent in the Agassiz Lake Plain Region (10.0 percent of the state area).

Breeding duck populations in the Prairie Pothole Region of North Dakota often fluctuate considerably from year to year due to the extreme variations in climate characterizing the northern glaciated prairies. These variations cause pronounced differences in water conditions of the prairie wetlands. Based on the 1967 study and on the similar, more intensive random-sampling studies in 1968 and 1969, the breeding duck populations in the Prairie Pothole Region were estimated as follows:

1967—1,907,000 pairs (95 percent HPD region of 1,346,000–2,467,000 pairs).

1968—995,000 pairs (95 percent HPD region of 769,000–1,222,000 pairs).

1969—1,955,000 pairs (95 percent IIPD region of 1,621,000–2,289,000 pairs).

The 3-year average population for this region approximated about 1,600,000 pairs.

Yearly fluctuations in populations of breeding waterfowl shown by our data compared favorably with indices to populations recently compiled from adjusted aerial survey data by the Bureau of Sport Fisheries and Wildlife (Pospichal et al. 1972). In these surveys, population indices of 1,559,000, 870,000, and 1,670,000 breeding pairs within the Prairie Pothole Region were calculated for 1967, 1968, and 1969, respectively. Statewide indices compiled by Schroeder (1971) from roadside transect data also showed similar yearly population fluctuations during this period.

Composition of Wetlands

The total wetland acreage in North Dakota was estimated to be about 3.2 million acres, based on data derived from the 130 randomly selected sample units in 1967. Natural-basin wetlands and "other wetlands" comprised about 2.5 and 0.7 million acres, respectively. A large proportion of the acreage of "other wetlands" was composed of reservoirs and large impoundments. The total number of natural basin wetlands and "other wetlands" was estimated to be about 2.7 and 0.3 million units, respectively. Road ditches and drainage channels were the most numerous types of "other wetlands."

Bach (1951) reported about 1,014,000 depressions, in North Dakota, capable of holding water. He estimated that these depressions would contain approximately 3,000,000 acres of surface water during an extremely wet year. According to the North Dakota State Water Commission (North Dakota State Water Comm. Rep. 1968), about 485,000 acres of reservoirs and im-

poundments over 50 acres in size occurred in the state.

Percentages of wetland habitats by areas and numbers are shown in Table 1 for each of the major biotic regions and for the state as a whole. Over 90 percent of the wetland area in the Prairie Pothole and Agassiz Lake Plain Regions was composed of natural basin wetlands. Reservoirs and large impoundments made up the largest area of wetlands in the Coteau Slope Region. In the Southwestern Slope Region the only extensive areas of wetlands were dugouts, stock ponds, oxbows, and streams.

Throughout the greater part of the state, the numerical composition of wetland habitat was less variable than the areal composition. Natural basin wetlands comprised 83 percent or more of the total number of wetlands in the Agassiz Lake Plain, Prairie Pothole, and Coteau Slope Regions. However, they accounted for only 15 percent of the wetlands in the Southwestern Slope Region. In the last region, 85 percent of the total number of wetlands was represented by streams, oxbows, and various man-made wetlands, including stock ponds, dugouts, and road ditches.

The Prairie Pothole Region (Fig. 1) contained an estimated 2.2 million acres of wetlands, projected from data on 68 randomly selected sample units in 1967. Natural basin wetlands and "other wetlands" comprised about 2.0 and 0.2 million acres, respectively. The detailed composition of wetland habitats in the Prairie Pothole Region is expressed in terms of proportional areas and proportional numbers of specific habitat types (Table 2). A survey of small wetlands in the Prairie Pothole and Coteau Slope Regions (Unpublished report, 1964, North Dakota Wetland Inventory, Bureau of Sport Fisheries and Wildlife) revealed approximately 317,000 wetlands which contained about 1,468,000 acres. This

Table 1. Generalized composition of wetland habitat types in major biotic regions of North Dakota, 1967.

HABITAT TYPE	PERCENT OF WETLAND ACREAGE ^a					PERCENT OF NUMBERS ^b				
	Region					Region				
	Agassiz Lake Plain	Prairie Pothole	Coteau Slope	Southwestern Slope	State-wide	Agassiz Lake Plain	Prairie Pothole	Coteau Slope	Southwestern Slope	State-wide
Natural basin wetlands	92	93	16	4	76	86	94	83	15	91
Streams and oxbows	3	5	6	41	5	1	1	7	35	2
Stock ponds and dugouts	T ^c	T ^c	3	54	2	T ^c	1	4	26	1
Reservoirs and large impoundments	T ^c	2	74	T ^c	15	T ^c	T ^c	T ^c	T ^c	T ^c
Road ditches and drainage channels	6	T ^c	T ^c	1	1	13	4	6	24	5
Other (sewage lagoons etc.)	T ^c	T ^c	T ^c	T ^c	T ^c	T ^c	T ^c	T ^c	T ^c	T ^c
Total	100	100	100	100	100	100	100	100	100	100

^a Areas with or without surface water.^b Includes wetlands lying partially inside quarter-section boundaries.^c T indicates 0.5 percent or less.

survey was based on interpretation of aerial photographs and, of necessity, excluded the more temporary wetland types.

In the Prairie Pothole Region, natural basin wetlands with untilled bottom soils occupied the largest area among the wetlands (63 percent), and comprised 42 percent of total numbers of wetlands. Seasonal (Class III) ponds and semipermanent (Class IV) ponds and lakes were the prevalent types of basin wetlands with untilled bottom soils. In combination they accounted for 51 percent of the total area of all wetlands. The drastic effect of agriculture on this region is shown by the comparison: wetlands with tilled bottom soils comprised 29 percent of the area but represented 52 percent of the total number of all wetlands.

Generalized Distribution of Breeding Waterfowl by Habitat

Breeding waterfowl in North Dakota are especially characteristic of four generalized categories of wetland habitat: (1) natural ponds and lakes, (2) streams and oxbows, (3) stock ponds and dugouts, and (4) reservoirs and large impoundments. In

1967, 76 percent of the breeding ducks in the state were found on natural ponds and lakes, 9 percent on reservoirs and large impoundments, 8 percent on streams and oxbows, and 5 percent on stock ponds and dugouts (Table 3). Miscellaneous habitats including road ditches, drainage channels, sewage lagoons, and various types of upland habitat were occupied by 2 percent of the breeding pairs.

The distribution of breeding ducks varied markedly in the generalized habitat types of the state (Table 3). Natural ponds and lakes were of paramount importance to breeding ducks in the Agassiz Lake Plain Region, Prairie Pothole Region, and Coteau Slope Region, but were of negligible importance in the Southwestern Slope Region. In contrast, the greater proportion of breeding ducks in the Southwestern Slope Region were found on stock ponds and dugouts. These man-made, stock-watering wetlands also were used to a considerable extent in the Coteau Slope Region, but were of little importance elsewhere. The relative use of the other wetland categories was quite variable, although, in general, they could be considered of minor significance.

Table 2. Detailed composition of wetland habitat types in the Prairie Pothole Region of North Dakota, 1967.

HABITAT TYPE	PERCENT OF WETLAND ACREAGE	PERCENT OF NUMBER
Natural wetlands		
Basin wetlands		
Prairie ponds and lakes (with untilled bottom soils)		
Ephemeral ponds (Class I)	1	9
Temporary ponds (Class II)	2	9
Seasonal ponds (Class III)	33	21
Semipermanent ponds and lakes (Class IV)	18	3
Permanent ponds and lakes (Class V)	3	T*
Alkali ponds and lakes (Class VI)	6	T*
Fen ponds (Class VII)	T*	T*
Cropland ponds (with tilled bottom soils)		
Temporary ponds (Class II)	1	2
Seasonal ponds (Class III)	3	2
Undifferentiated tillage ponds (Class II and III)	25	48
Streams and oxbows	5	1
Man-made wetlands		
Stock ponds	T*	T*
Dugouts	T*	T*
Reservoirs and large impoundments	2	T*
Road ditches and drainage channels	T*	4
Other (sewage lagoons etc.)	T*	T*
Total	100	100

* T indicates 0.5 percent or less.

Ecological Distribution of Waterfowl in the Prairie Pothole Region

The distribution of breeding waterfowl in specific wetland habitat types within the Prairie Pothole Region of North Dakota is shown in Table 4. These data, accumulated over a 3-year period (1967-69), afford

an opportunity to establish relative values to waterfowl for the major classes of natural basin wetlands that were described by Stewart and Kantrud (1971). In addition, the relative values of streams and oxbows, and various types of man-made wetlands may be assessed.

On the basis of the average distribution

Table 3. Ecological distribution (percent) of total breeding duck populations in major biotic regions of North Dakota, 1967.

HABITAT TYPE	REGION				STATEWIDE (N = 1,037 pairs)
	Agassiz Lake Plain (N = 17 pairs)	Prairie Pothole (N = 872 pairs)	Coteau Slope (N = 106 pairs)	Southwestern Slope (N = 42 pairs)	
Natural ponds and lakes	88	80	70	0	76
Streams and oxbows	6	8	13	5	8
Stock ponds and dugouts	0	T*	17	83	5
Reservoirs and large impoundments	0	11	0	0	9
Road ditches and drainage channels	6	2	0	5	2
Other habitats ^b	0	T*	0	7	T*
Total	100	100	100	100	100

* Indicates 0.5 percent or less.

^b Mostly dry habitats on the upland.

Table 4. Ecological distribution of breeding duck populations in the Prairie Pothole Region of North Dakota.

HABITAT TYPE	PERCENT OF			PERCENT AVERAGE 1967-69
	872 Pairs in 1967	1,529 Pairs in 1968	4,790 Pairs in 1969	
Natural wetlands				
Basin wetlands				
Prairie ponds and lakes (with untilled bottom soils)				
Ephemeral ponds (Class I)	T*	T*	0	T*
Temporary ponds (Class II)	2	1	2	1
Seasonal ponds (Class III)	50	32	45	42
Semipermanent ponds and lakes (Class IV)	16	41	23	27
Permanent ponds and lakes (Class V)	0	8	1	3
Alkali ponds and lakes (Class VI)	1	T*	T*	T*
Fen ponds (Class VII)	0	T*	T*	T*
Cropland ponds (with tilled bottom soils)				
Temporary ponds (Class II)	0	1	2	1
Seasonal ponds (Class III)	3	3	9	5
Undifferentiated tillage ponds (Class II and III)	8	2	6	5
Streams and oxbows	7	5	4	6
Man-made wetlands				
Stock ponds	T*	2	1	1
Dugouts	0	2	2	1
Reservoirs and large impoundments	11	0	3	4
Road ditches and drainage channels	2	1	1	2
Other (sewage lagoons etc.)	0	T*	0	T*
Upland habitats	T*	T*	1	T*
Total	100	100	100	100

* Indicates 0.5 percent or less.

during the period 1967-69, about 84 percent of the breeding ducks were found on natural basin wetlands. The relationship to agricultural land-use practices is shown by the fact that 73 percent of the total population was found on natural basin wetlands with untilled bottom soils, and 11 percent on wetlands with tilled basins in cropland.

It is apparent that seasonal (Class III) ponds and semipermanent (Class IV) ponds and lakes represent the primary wetland habitats for breeding waterfowl. An average (1967-69) of about three-fourths of the breeding ducks used these two wetland classes, including seasonal ponds with tilled bottom soils.

Use of other wetlands was much more limited. However, streams and oxbows, reservoirs and large impoundments were of appreciable value to breeding ducks for they were occupied by 6 percent and 4

percent of the total number, respectively. Many wetland habitats of low value were used by proportions of the population ranging from 1 to 3 percent. These included temporary (Class II) ponds, permanent (Class V) ponds and lakes, stock ponds, dugouts, road ditches, and drainage channels. Other wetland habitats were inconsequential to breeding waterfowl since they were each occupied by less than 0.5 percent of the waterfowl population. These included ephemeral (Class I) ponds, alkali (Class VI) ponds and lakes, fen (Class VII) ponds, and sewage lagoons.

Noticeable yearly fluctuations in the ecological distribution of breeding waterfowl frequently occur in the Prairie Pothole Region (Table 4) due primarily to changing climatic conditions. These differences are closely related to yearly variations in the acreage of seasonal ponds with surface

water. During the waterfowl breeding seasons of 1967 and 1969, excellent water conditions prevailed in the Prairie Pothole Region, while in 1968, there was a fairly severe drought over a large portion of the area. In 1967 and 1969 (Table 4), seasonal ponds (including those with tilled bottom soils) were used, respectively, by 53 percent and 54 percent of the breeding ducks while semipermanent ponds and lakes were used by only 16 percent and 23 percent of the ducks. During these 2 years, the average acreage of seasonal ponds with surface water per sample unit was 4.74 and 5.37, respectively. In 1968, seasonal ponds were used by 35 percent of the breeding ducks and semipermanent ponds and lakes by 41 percent. At this time, the average acreage of seasonal ponds with surface water was down to 1.78 per sample unit.

These findings are in agreement with data presented by Stoudt (1971) from detailed investigations of waterfowl habitat in the prairie parklands of Saskatchewan. His report indicates that a much larger proportion of the total breeding duck population occurred on less permanent wetland types during years when maximum acreages of wetland basins contained surface water. The situation in the prairie pothole region of Minnesota apparently is somewhat different. Studies in that area by Jessen et al. (1964) on a natural wetland complex containing a variety of wetland classes, indicated that the greater proportion of the breeding duck populations occurred on the more permanent types of basin wetlands each year regardless of water conditions.

Ecological Distribution of Waterfowl Species

The ecological distribution of breeding populations of the various species of waterfowl in the Prairie Pothole Region is detailed in Table 5. The proportions (in per-

cent) of these populations that occurred in major habitat types or combination of types were based on a 3-year average of data obtained from the random-sampling studies of 1967, 1968, and 1969.

Certain generalized similarities in distribution are apparent among the species. Natural seasonal (Class III) ponds, and semipermanent (Class IV) ponds and lakes were found to be the primary wetland habitats utilized by all species for breeding. As few as 59 percent of the pintails and as many as 86 percent of the canvasbacks used these two habitats.

The proportional use of these two habitats (Class III and Class IV wetlands) by the two distinct ecological groups of species—dabblers and divers—differed markedly. Dabblers were represented on the sample areas chiefly by the mallard, gadwall, pintail, green-winged teal, blue-winged teal, shoveler, and American widgeon; divers, by the redhead, ring-necked duck, canvasback, lesser scaup, and ruddy duck. From 40 to 54 percent of populations of the principal species of dabbling ducks occupied natural seasonal ponds, but only 9 to 19 percent of populations of the diving duck species were found on them. Conversely, semipermanent ponds and lakes provided breeding habitat for 53 to 71 percent of populations of the principal species of diving ducks, but for only 12 to 32 percent of populations of the principal species of dabbling ducks.

Among the dabbling duck species, pintails were unique, for the proportion of the population occurring on cropland ponds (those with tilled bottom soils) was noticeably higher than for other species. Also, there were relatively high proportions of green-winged and blue-winged teals on seasonal ponds; of shovelers and gadwalls

Table 5. Ecological distribution of breeding populations of waterfowl species in the Prairie Pothole Region of North Dakota.

SPECIES	TOTAL NUMBER OF PAIRS IN SAMPLE	PERCENT DISTRIBUTION (3-year average, 1967-69)							Total
		Cropland Ponds (Class II & III) ^a	Prairie Seasonal Ponds (Class III)	Semipermanent Ponds & Lakes (Class IV)	Other Basin Wetlands ^b	Streams & Ox- bows	Reservoirs & Large Impound- ments	Other Habi- tats ^c	
Dabbling ducks									
Mallard	934	15	44	20	4	8	2	6	100
Gadwall	849	11	41	26	5	5	8	4	100
Pintail	1,129	24	40	19	4	5	1	6	100
Green-winged teal	247	12	54	12	8	3	4	6	100
Blue-winged teal	2,322	8	52	24	4	5	3	4	100
Shoveler	687	9	40	32	2	8	6	4	100
American widgeon	107	12	42	18	3	8	11	5	100
Diving ducks									
Redhead	354	2	19	63	1	6	8	T ^d	100
Ring-necked duck	35	3	15	69	6	3	3	0	100
Canvasback	107	1	15	71	1	0	10	2	100
Lesser scaup	102	2	12	53	1	1	8	23	100
Ruddy duck	315	T ^d	9	67	12	T ^d	12	T ^d	100

^a Ponds with tilled bottom soils, including temporary (Class II) and seasonal (Class III) ponds.^b Ephemeral (Class I) ponds, permanent (Class V) ponds and lakes, alkali (Class VI) ponds and lakes, fen (Class VII) ponds, and natural temporary (Class II) ponds (those with untilled bottom soils).^c Road ditches, drainage channels, sewage lagoons, stock ponds, dugouts, and upland habitats.^d Indicates less than 0.5 percent.

on semipermanent ponds; and of American widgeons on reservoirs and large impoundments. The ecological distribution of breeding populations of the more common species of dabbling ducks on the Waubay study area in northeastern South Dakota apparently is quite different. According to Drewien and Springer (1969), the proportion of dabbling ducks on semipermanent ponds and lakes was much greater than the proportion on seasonal ponds; however, this area contained a much higher proportion of semipermanent ponds than did North Dakota.

Among the species of diving ducks, the lesser scaup was found to be rather distinctive; the proportion of the population on semipermanent ponds was relatively low, while the proportion of its population on "other habitats," chiefly stock ponds and dugouts, was quite high.

Local Variation in Ecological Distribution of Waterfowl

Local variations in habitat use by breeding waterfowl populations were conspicuous in some areas, especially among the four biotic subregions or strata within the Prairie Pothole Region (Fig. 1). The distribution of all waterfowl populations in the principal wetland habitats or composite habitats is shown for each subregion in Table 6.

Seasonal and semipermanent ponds and lakes were important in all four subregions, although their relative use varied considerably. Seasonal ponds were used more extensively on the Northeastern Drift Plain and on the Missouri Coteau than elsewhere. The Missouri Coteau also was distinctive in that a much greater proportion (40 percent) of the breeding ducks occupied semipermanent ponds and lakes. The use of cropland ponds (those with tilled bottom soils) was especially pronounced on the

Table 6. Variation in ecological distribution of breeding duck populations in the Prairie Pothole Region.

WETLAND HABITATS	PERCENT DISTRIBUTION (3-year average, 1967-69)			
	Subregions			
	Northeastern Drift Plain (N = 911 pairs)	Southern Drift Plain (N = 1,615 pairs)	Northwestern Drift Plain (N = 717 pairs)	Missouri Coteau (N = 3,948 pairs)
Cropland ponds (Class II and III) ^a	7	16	20	4
Prairie seasonal ponds (Class III)	55	39	22	46
Semipermanent ponds and lakes (Class IV)	21	27	17	40
Other basin wetlands ^b	1	8	4	2
Streams and oxbows	8	4	16	T ^c
Reservoirs and large impoundments	4	T ^c	18	3
Other habitats ^d	5	5	4	4
Total	100	100	100	100

^a Ponds with tilled bottom soils, including temporary (Class II) and seasonal (Class III) ponds.

^b Ephemeral (Class I) ponds, permanent (Class V) ponds and lakes, alkali (Class VI) ponds and lakes, fen (Class VII) ponds, and natural temporary (Class II) ponds (those with untilled bottom soils).

^c Road ditches, drainage channels, sewage lagoons, stock ponds, dugouts, and upland habitats.

^d Indicates 0.5 percent or less.

Northwestern Drift Plain and Southern Drift Plain. Streams and oxbows, reservoirs, and large impoundments on the Northwestern Drift Plain were occupied by 34 percent of all the breeding ducks, a proportion much greater than for the other subregions.

DISCUSSION

The maintenance of populations of breeding waterfowl in North Dakota is dependent, in part, on the diversity of existing wetland habitats. Natural seasonal (Class III) ponds (those with untilled bottom soils) and semipermanent (Class IV) ponds and lakes are the primary wetland habitats used by waterfowl. Other wetland types that are fairly important to waterfowl include streams and oxbows, and wetlands with tilled basins in croplands. The latter group is especially attractive to pintails.

Other types of wetlands, including man-made ones, are responsible for maintaining certain local, rather limited, breeding populations. Stock ponds and dugouts serve this purpose in the Southwestern Slope Region, and are of appreciable importance also in the Coteau Slope Region. Along some of

the river systems, waterfowl are benefited to some extent by reservoirs and large impoundments. At the J. Clark Salyer National Wildlife Refuge, shallow impoundments of the Mouse River are managed specifically for waterfowl through carefully regulated control of water levels. As a result, thousands of pairs of breeding ducks are attracted to this refuge each year.

Within the Prairie Pothole Region, small numbers of breeding waterfowl are found on temporary (Class II) ponds, and permanent (Class V) ponds and lakes. Several minor wetland types within this region are of proportionally little significance to the breeding waterfowl. These include ephemeral (Class I) ponds, alkali (Class VI) ponds and lakes, fen (Class VII) ponds, and sewage lagoons.

Optimum environmental conditions for breeding dabbling ducks apparently exist during years when large numbers and acreages of seasonal (Class III) pond basins contain surface water. The response of dabbling ducks to these conditions is indicated by the higher population densities in the principal waterfowl breeding area, the Prairie Pothole Region, and by the

increased proportion of dabbling ducks using seasonal ponds. The number and acreage of seasonal pond basins with surface water are greatly reduced during years of low precipitation. These conditions are reflected in much lower densities of dabbling ducks and in lower proportions of dabbling ducks that utilize seasonal ponds.

Semipermanent (Class IV) ponds and lakes are the principal habitats for diving duck populations each year regardless of variations in general water conditions of total wetlands. They are of critical importance also to dabbling ducks, particularly during years of low precipitation when most basins of other wetland types are dry. The maintenance of a reserve stock of breeding dabbling ducks during these unfavorable periods is assured by the presence of semipermanent ponds and lakes and by the limited numbers and acreage of other, more permanent wetland types.

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Federal Crop Insurance Corporation
Office of
the Manager

Washington, D.C.
20250

MAR 24 1988

Honorable Kent Conrad
United States Senate
Washington, D.C. 20250

Dear Senator Conrad:

Thank you for your letter dated March 17, 1988, concerning implementation of the "swampbuster" provisions of the Food Security Act of 1985.

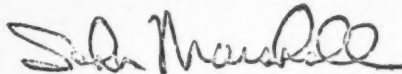
You are correct that there is some discretion in the process of determining whether or not a violation of the rules has occurred. The United States Department of Agriculture (USDA) assigned the Agricultural Conservation and Stabilization Service (ASCS) the responsibility for determining whether the conversion of a wetland was commenced or completed prior to December 23, 1985. Under the final rule on swampbuster, farmers are allowed to make a request for a commenced determination up to September 19, 1988.

In your example where a farmer has drained one small wet spot or pothole out of perhaps dozens, the Federal Crop Insurance Corporation (FCIC) will review the insured's contract folder to determine if it contains a signed AD-1026 certification form for the current crop year. If the current AD-1026 form is not in the insured's contract folder, FCIC will then contact ASCS to determine if there is a possible violation. If ASCS does not have a current signed AD-1026 on file for the farmer, ASCS will then request the Soil Conservation Service (SCS) to determine if a violation has occurred and if there is an exemption from the imposition of a penalty. Exemptions are specified in Section 12.5(v) of 7 CFR, Part 12. An exemption could be considered if SCS determines that the drainage of the pothole or small wet spot and action of the farmer with respect to the production of an agricultural commodity on the converted wetland would only have a minimal impact on the hydrological and biological aspects of the wetland. If the minimal effect exemption applies, the farmer will be eligible for USDA program benefits. If SCS determines the minimal effect does not apply, the farmer will be ineligible for USDA program benefits on that farm and all other farms in which he has an interest.

When violations occur, the FCIC will have no choice under the law but to withhold crop insurance payments and return any premium paid less 20 percent for administrative expenses.

We hope this information will be helpful.

Sincerely,



JOHN MARSHALL
Manager

Senator CONRAD. We will call the next panel which will be Mike Berger, the director of government relations of Ducks Unlimited, Inc.; Sid Moss, the president of the National Association of State Foresters; Wayne Baron from the National Wildlife Federation. He is the director of the Prairie Wetlands Resource Center, and Gary Bales from the Wildlife Charitable Trust.

We will proceed with Mr. Berger. Welcome to all of you. It's good to have you here.

STATEMENT OF MICHAEL E. BERGER, DIRECTOR OF GOVERNMENT RELATIONS, DUCKS UNLIMITED, INC., LONG GROVE, IL

Mr. BERGER. Thank you, sir. It is a pleasure for me to be here this morning. I have submitted prepared testimony for the record. I will try to abbreviate and summarize those remarks. As you can imagine, Ducks Unlimited is quite supportive and excited about the opportunities available under the conservation provision of the farm bill.

HABITAT

I would like to point out that habitat is the key to the survival and prosperity of waterfowl populations. Without adequate supplies of quality habitats for breeding, brood rearing, migration and wintering, waterfowl, as well as more than 600 other species of wildlife, which inhabit our wetland projects, could not survive.

As you have heard many times previously we're losing wetlands at an alarming rate in the United States, and it has been estimated that over 54 percent of the original wetlands in the contiguous States have been lost. Most of these wetlands were lost to agricultural crop conversion. In addition, the destruction of upland vegetation surrounding many of the remaining wetlands crowds the nesting birds into narrow strips of vegetation where hens and eggs are easy prey for foxes, skunks, and other predators.

NORTH AMERICAN WATERFOWL MANAGEMENT PLAN

The swampbuster and CRP provisions of the farm bill mesh quite nicely with another program that I heard mentioned only once earlier this morning. This is the North American Waterfowl Management Plan which was signed by representatives of the governments of Canada and the United States on May 14, 1986. This plan seeks to restore waterfowl populations to the levels they enjoyed throughout the 1970's. The plan provides a broad framework of actions both countries need to undertake and accomplish between now and the year 2000. The success of the plan depends upon cooperation and understanding among Federal, State and provincial government agencies, private conservation organizations, and individuals. The major means of achieving the waterfowl population goal is through habitat protection and enhancement.

It is perhaps coincidental, but certainly providential, that these areas of most concern in the North American plan are also the areas where the conservation provisions of the farm bill have the greatest application and promise.

I stress the word "promise" because I think for the act to fulfill its promise it must be enforced. That point has been touched on several times this morning, and I will not belabor it.

However, it is my understanding, contrary to some reports that I heard this morning, that no benefits have yet been denied to landowners in North Dakota because of violations of swampbuster. I wish this was because I felt the wetlands had ceased completely, but I fear that is not the case.

OTHER SUGGESTIONS

Let me make a couple of other suggestions. Regarding CRP, I believe that consideration should be given to some mechanisms for making permanent the conversion of cropland to cover. In many cases, the total of the payments of the period of the program will approximate, or perhaps even exceed, the value of the lands in today's market. For a small additional payment, I believe the lands could be obtained in perpetuity and secured with a deed restriction. Such arrangement could be negotiated at the beginning of the CRP agreement or in the final year of participation, and I think this program would be particularly valuable for CRP participants who have chosen to use wetlands as a cover crop or for lands which are located in proximity to wetlands in Federal or State ownership or given further protection under swampbuster.

An additional point is that agencies outside the Department of Agriculture need to be aware of, and assist with, the agricultural policies. The Yazoo Basin and the Corps of Engineers is an example of this. The North American Waterfowl Management Plan calls for the protection of an additional 686,000 acres in the Lower Mississippi River Valley, and that includes the Yazoo Basin. Over the next 15 years, Federal, State, and private sources will likely spend in excess of \$100 million to accomplish this habitat objective. Yet over the next 20 years, the Corps plans to spend about \$2 billion—\$2 billion—in the name of flood control and improved agricultural drainage. The destruction of natural wetlands and bottomland hardwoods ironically will actually increase the flood potential, and the improvement in agricultural drainage will mean an increase in lands growing crops already in surplus and for which the Department of Agriculture will have to pay subsidies into the future. Alternative solutions are available that are less expensive and still beneficial.

I would like to take another 30 seconds, if I could, to emphasize a point that came up this morning on the importance of the small type 1 wetlands. They are extremely important for waterfowl. As you mentioned earlier, the waterfowl may not stay around these wetlands long. Obviously if the water does not stay, the birds cannot stay throughout the breeding season. But these wetlands do provide an enormous source of food for birds during the migration period when they are returning to their breeding grounds. They are very important for pair formation and bonding. They are particularly important for prairie nesting species, such as pintails, which are perhaps the most severely depleted of the important duck species at the present time.

[The prepared statement and responses to Senator Conrad's questions of Mr. Berger follow:]



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TESTIMONY OF

Michael E. Berger

Director of Government Relations

Ducks Unlimited, Inc.

Regarding

Conservation Provisions of

Food Security Act of 1985

Senate Committee on Agriculture, Nutrition, and Forestry

Subcommittee on Agricultural Research, Conservation,

Forestry, and General Legislation

March 24, 1988

328A Senate Russell Office Building

LEADER IN WETLANDS CONSERVATION

Good morning, Mr. Chairman.

I am Michael E. Berger, Director of Government Relations for Ducks Unlimited, Inc. It is a pleasure for me to be here and to have the opportunity to comment on the conservation provisions of the 1985 Food Security Act.

Ducks Unlimited, Inc. is an international waterfowl conservation organization of nearly 550,000 contributors organized into almost 4,000 chapters nationwide. For the past 51 years, our focus has been the preservation, development and enhancement of waterfowl habitats for the benefit of North America's wild ducks and geese. In this regard, we have reserved and/or developed over 4 million acres of waterfowl habitat in the United States, Canada, and Mexico. We work cooperatively with federal, state, and provincial agencies as well as private organizations for the achievement of our goals.

Habitat is the key to the survival and prosperity of waterfowl populations. Without adequate supplies of quality habitats for breeding, brood rearing, migration and wintering, waterfowl, as well as the more than 600 other species of wildlife which inhabit our wetland projects, could not survive. But wetlands are being lost at an alarming rate of about 450,000 acres each year in the United States alone. It has been estimated that 54 percent of the original wetlands in the contiguous states have been lost. Most of these lost wetlands were converted to agricultural crop production. In addition, destruction of upland vegetation surrounding remaining wetlands crowds nesting birds into narrow strips of vegetation where hens and eggs are easy prey for foxes, skunks and other predators.

To the rescue of this sad situation in 1985 came the Food Security Act with its outstanding conservation provisions. The conservation provisions are in the form of carrots and sticks. The carrot of most interest to Ducks Unlimited is the Conservation Reserve Program (CRP) which would pay farmers to grow wildlife habitat rather than surplus crops on lands prone to erosion. The stick of most interest is swampbuster which requires the denial of federal subsidies to landowners who convert wetlands to croplands.

Aside from the obvious benefits these programs hold for wildlife habitat, they are also of tremendous value to landowners and the general public. Under CRP, a farmer is allowed essentially to idle his least productive lands from the production of commodities already in surplus, continue to crop his better lands, reduce erosion, improve soils, and water quality and receive a payment to boot. Under swampbuster, a farmer is strongly encouraged to refrain from bringing into production areas which would be marginal at best for government crops already being produced in surpluses.

In addition to these programs, the 1985 Farm Bill authorized the Farmers Home Administration (FmHA) to rescue troubled or failed

farmers through the purchase or application of permanent conservation easements on acres least productive or inappropriate for agriculture. The FmHA has been working closely with the U.S. Fish and Wildlife Service on the application of these provisions and the potential benefit to troubled landowners and troubled wildlife is tremendous.

The conservation provisions of the Farm Bill also mesh quite nicely with another program of international scope and importance. The North American Waterfowl Management Plan was signed by representatives of the governments of Canada and the United States on May 14, 1986, and seeks to restore North American waterfowl populations to the levels they enjoyed in the 1970's. The Plan provides a broad framework of actions both countries need to undertake and accomplish by the year 2000. The success of the Plan depends upon cooperation and understanding among federal state and provincial government agencies, private conservation organizations, and individuals. The major means of achieving the goal is through habitat protection and enhancement.

Although the Plan envisions actions all across the continent, it focuses attention on six major areas: prairie pothole region of the mid-continent, lower Mississippi Valley, Gulf Coast, Central Valley of California, Atlantic Coast, and Great Lakes-St. Lawrence lowlands. It is perhaps coincidental, but certainly providential, that these areas are ones where the conservation provisions of the Farm Security Act have the greatest application and promise.

I stress the word "promise", for we all know that the law's words will not accomplish anything alone. The words require funding and enforcement by the Congress and the Department of Agriculture to make an ambitious dream become reality.

A few suggestions may be in order. First, is the enforcement of present regulations. The Congress must inform the Department of Agriculture, in no uncertain terms, that it wants the programs operated as intended. Agriculture must then instruct all persons working with the programs that the regulations must be fully and rapidly implemented. It is my understanding that to date no federal benefits have been denied to North Dakota producers for violations of swampbuster regs. I wish the reason for this was that wetland drainage has stopped. However, I fear that the reason is laxity of enforcement due to landowner opposition to the rules or Department of Agriculture apathy or empathy. This situation must be corrected.

Second, an expansion of FmHA authorities might be in order. As I hinted earlier, FmHA has concluded that it has an affirmative responsibility, under authority of Executive Order 11990 (Protection of Wetlands), to protect wetlands in conjunction with its inventory lands disposal process. FmHA will accomplish this,

in cooperation with FWS by applying perpetual deed restrictions which either protect existing productive wetlands from future disturbance, or provide for the restoration or enhancement of previously impacted wetlands. But why should FmHA wait until wetlands are destroyed or land is foreclosed before applying deed restrictions? Wouldn't it be preferable for FmHA to request, or preferably require, similar deed restrictions on lands for which it is considering or about to loan money? This seems a reasonable strategy by which FmHA could better protect its investment, reduce a new landowner's debt load, and insure that existing wetlands will not be destroyed.

Third, regarding the Conservation Reserve Program, consideration should be given to mechanisms for making permanent the conversion of cropland to cover. In many cases, the total of CRP payments over the ten years of the program will approximate, or even exceed, the value of the lands in today's market. For a small additional payment to the landowner, lands of particular importance could be obtained in perpetuity and secured with a deed restriction. Such arrangements could be negotiated with the landowner either at initial enrollment or in the final year of CRP participation. Such arrangements could be negotiated with the landowner either at initial enrollment or in the final year of CRP participation. Such a program would be particularly valuable for CRP land which have used wetlands as a cover crop or for lands which are located in proximity to wetlands in federal or state ownership or protected by swampbuster provisions.

Fourth, agencies outside the Department of Agriculture need to be aware of and assist with the implementation of Agriculture policies. Forget for a moment that the Corps of Engineers seemingly ignores the previously mentioned Executive Order 11990 by continuing to promote and develop projects which are detrimental to wetlands and wasteful of taxpayer dollars. The Yazoo Basin in Mississippi is an example. The North American Waterfowl Management Plan calls for the protection of an additional 686,000 acres in the Lower Mississippi River Valley which includes the Yazoo Basin. Over the next 15 years, federal, state, and private sources will spend \$100 million or more to accomplish this objective. Yet over the next 20 years, the Corps plans to spend \$2 billion in the name of flood control and improved agricultural drainage. The destruction of natural wetlands and bottomland hardwoods, which collect and slowly release flood waters, will actually increase the flood potential, and the improvement in agricultural drainage will mean an increase in lands growing crops already in surplus and for which Agriculture will pay subsidies in the future. Alternative solutions which will not destroy wetlands, which are less expensive, and which will solve problems are available.

In conclusion, Mr. Chairman, the conservation provisions of the 1985 Farm Bill are excellent ideas and applauded by conservationists. They have tremendous potential for good. Strict enforcement of the regulations and cross compliance by other federal agencies would bring even greater benefits.

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United States Senate

COMMITTEE ON
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 WASHINGTON, DC 20510-8000

April 7, 1988

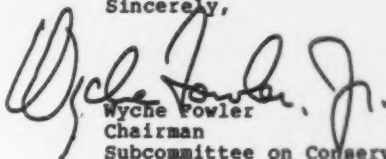
Mr. Mike Berger
 Director of Governmental Affairs
 Ducks Unlimited
 The Wildlife Legislative Fund of America
 1000 Connecticut Ave., N.W.
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 Washington, D.C. 20036

Dear Mr. Berger:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
 Chairman
 Subcommittee on Conservation and
 Forestry

Additional Questions for MR. MICHAEL BERGER, DUCKS
UNLIMITED, submitted by Senator Conrad

1. In your testimony you stated that "The Congress must inform the Department of Agriculture, in no uncertain terms, that it wants the programs operated as intended." What leads you to believe that the Congress needs to make such a statement?
2. In your testimony, you stated that no benefits have been denied to North Dakota producers for violations of swampbuster regs. What evidence do you have that any North Dakota producers have violated swampbuster regulations?
3. USDA programs are administered at the local level by county committees consisting of farmers elected by their peers. If a local committee finds that a farmer has violated swampbuster rules by an inadvertant or minor drainage activity, it has little choice but to impose the only available penalty--loss of all federal farm program benefits. In today's economy, that can well mean putting that farmer out of business. Do you believe that such a violation deserves putting the farmer out of business?
4. You state that local USDA officials do not enforce the law because of "empathy" or sympathy with farmers. What evidence do you have that local officials do not enforce the law?



DUCKS
UNLIMITED
INC.

NATIONAL HEADQUARTERS

One Waterfowl Way
Long Grove, IL 60047
(312) 438-4300

10:22

April 20, 1988

The Hon. Wyche Fowler
Chairman of the Subcommittee
on Conservation and Forestry
Committee on Agriculture
328A Senate Rayburn Office Building
Washington, D.C. 20510-6000

Dear Senator Fowler:

I appreciate the opportunity to respond to additional questions from Senator Conrad relating to my testimony before your subcommittee on March 24, 1988.

1. I believe that members of Congress hold a variety of opinions about what the Swampbuster provision was intended to do, and that they have relayed these opinions to Department of Agriculture officials at various levels. This has created uncertainty within Agriculture regarding how strictly, or even if, the regulations are to be enforced. Congress needs to remove this uncertainty within Agriculture and the agriculture community so that wetland conservation efforts can go forward.
2. My statement that no benefits have been denied to North Dakota producers for Swampbuster violations is, I believe, a matter of record. At least I have not heard or read any statements to the contrary from the U.S. Department of Agriculture. It is also my understanding, from conversations with North Dakota residents I believe credible, that agriculture drainage activities are continuing at the same level of activity now as prior to passage of the 1985 Farm Bill.
3. I believe Congress was fully aware of the possibility that some farmers who violate Swampbuster could be out of business, and passed the legislation knowing this. This indicates to me Congress' realization of the seriousness of continued wetland losses. Also, farmers have several opportunities to determine if a wetland they are contemplating draining is covered by Swampbuster, making an "inadvertent" draining unlikely.

I believe it should be made quite clear that draining a wetland and going out of business is not the only option. A farmer may also choose to not drain the wetland and continue

LEADER IN WETLANDS CONSERVATION

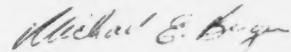
- 2 -

to receive generous federal benefits. Swampbuster is not a prohibition of draining. Swampbuster gives the farmer a free choice, and he may choose among alternatives with full knowledge of the consequences of his actions.

4. As was stated in the preface to question 3, USDA programs are administered (and enforced) by county committees of farmers. My point is that these individuals are less likely to deprive one of their own of benefits which could be maintained with a liberal interpretation of regulations.

Thank you, Senator Fowler, for this opportunity to respond to these additional questions.

Sincerely,



Michael E. Berger
Director of Government Relations

MEB/rs

Senator CONRAD. Could I have a picture ¹ given to you, and I have a copy of the picture here. This picture shows the kind of situation we're talking about. That's what we would call a nuisance spot. Are you telling me that this is critical for duck habitat?

Mr. BERGER. Yes, sir.

Senator CONRAD. Well, I tell you I really think you're really taking the issue to a level that's not reasonable. This is not important to duck habitat. I mean, we will have people who have been on farms all their lives observing duck behavior. This is not critical to duck habitat.

The best studies that we have, and I introduced one into the record this morning, that came out of a research center in North Dakota, a 3-year study, the results I will repeat. Things like this counted for less than one-half of 1 percent of the observed breeding waterfowl population. This is not where ducks breed.

I mean, we've got to be frank with each other and realistic. When we're told that this is critical to duck habitat, I mean, it's not going to be taken seriously by people.

Mr. BERGER. I said that because of the short nature of the life these wetlands enjoy each year that they are not for duck breeding. Maybe we're just playing with words here. The ducks are not going to build a nest here and then use this for brood water. But these wetlands are important for other functions in the waterfowls' life cycle.

I think the type 1 wetlands that you had referred to before and the wetlands that are referred to as important to only a small part of the breeding population are not analogous wetland types. One is a subset of the other.

Senator CONRAD. We're trying to get to nuisance spots, ephemeral wet spots which is defined the same way in the study as we'd know this to be an ephemeral wet spot.

Mr. BERGER. Mr. Chairman, I've been confused all morning here with what the problem with the landowners is with this type of spot. If they have been farming this spot, the swampbuster provision does not change anything. They're still allowed to farm this.

Senator CONRAD. Let me share with you these pictures. Here's a picture of a wetland that this farmer sent to me, and he said, this is a wetland; I acknowledge that's a wetland, ought not to be touched. Let me just share that with you.

This next picture has also been defined as a wetland. There's no water on it. In 7 years he's seen water on it once when they had 7 inches of rain. This is also defined as a wetland.

Mr. BERGER. What is his problem with that wetland in the second picture?

Senator CONRAD. The problem is if he has that kind of downpour and he moves to drain it, he's going to lose all of his farm program benefits.

Mr. BERGER. Yes, but he can farm it 6 years out of 7 or he may have to delay it 1 year out of 7 and go into the area 2 weeks later. He's not precluded from farming this land. He's precluded from installing a drain.

¹ The pictures used during the hearing are not available for the hearing record.

Senator CONRAD. He is precluded from farming it in the traditional way, and if you were a farmer and you were going out and you were stopped by that little nuisance spot that I showed you, which I think if we're to be frank with each other, is not critical for duck habitat.

Mr. BERGER. But have these landowners and farmers not been bothered by this situation in the past, as I think was raised this morning? What has he been doing with this wetland for the past 20 years?

Senator CONRAD. He's farmed it, and in the one case where he had 7 inches of rain, what did he do? He drained it and he cultivated it. Now, according to the interpretation of the law that's been put in place, he can't do that any more, and he sees that as irrational, and I must say I agree with him. It's irrational.

Mr. BERGER. Senator Conrad, if he has installed a drain in the past, then that wetland is exempt from swampbuster. He can maintain that drain and keep it drained. That's provided.

Senator CONRAD. The problem is this. If you have spot that was not previously drained and you have water there with a heavy rain, can he farm that as he always has? Could he go in?

Mr. BERGER. If he has drained it in the past the drain can be maintained.

Senator CONRAD. Right. If it's not been drained before, if he has a downpour, could he drain that ephemeral wet spot now?

Mr. BERGER. No, sir. He would have to wait until it dried and then he could plow right through it.

Senator CONRAD. That's the problem. It's seen as unreasonable.

Mr. BERGER. If he has not seen fit to drain it when he has had these downpours before, and he has not seen fit to drain it when it is wet, then I don't understand why he should see fit to drain it now. If he has drained it before, then it does not come under the protection of swampbuster.

Senator CONRAD. Well, again, you've got all kinds of situations, real world situations. Not been drained before, drained before, and no evidence of having been drained before, no record of having been drained before in a way that's conclusive. And he's stuck with what he sees as an incredible intrusion into his ability to farm.

In many cases that's what we're seeing. You've got a situation that seems very logical to you sitting here. If you were out there and you had a little wet spot like the one I showed you there and you were told, no, you cannot drain that, that is for waterfowl habitat, they think you're daffy. These are legitimate, honest people who have, in many cases, a very sincere interest in preserving our resources as well.

Let me take you to the other question. In North Dakota, the evidence I entered into the record this morning is the duck population is higher now than it was 30 years ago in North Dakota, and this is Fish and Wildlife's own work, and at the same time we've heard testimony, and we'll hear more, that we've had all this draining going on.

How do you explain the discrepancy?

Mr. BERGER. Well, I think prairies and pothole regions are as they are for a variety of reasons. One is that there are wet cycles and dry cycles, and the water regime varies. Ducks come and go. I

don't know which base period you're referring to, but there are high periods of water when there are more ducks and there are low periods of water when there are fewer ducks.

I suspect that if you compare the present populations with periods of higher water that there have been in the past periods when the waterfowl population in North Dakota on average exceed what they have been for the last few years.

Senator CONRAD. What I've tried to do is give a very balanced view on that question. I've taken the 10 most recent years, go back 30 years and take a 10-year period, a whole 10 years so that we get over this argument, well, we have wet periods and dry periods. Ten-year periods. Compared to 10 years ago, we have 40 percent more ducks.

Mr. BERGER. Senator, the North American Waterfowl Management Plan is trying to return waterfowl to the levels they were in the 1970's. I would argue that the waterfowl populations, and not having looked at those data or having them in front of me, I would suspect that if you compared the last year with the period of the early 1970's, you would find the populations are lower in North Dakota today than they were in the early 1970's.

Senator CONRAD. Well, that's very selective use of statistics though, isn't it? I mean, you've taken the 2 highest years out of 30 years and you say you want to return to those years.

Mr. BERGER. I'm saying that's our goal, but if you look at the late 1950's as a comparison, again, that was a very low period. You would find that nearly anywhere is an increase in waterfowl.

Senator CONRAD. Let's take that whole 10-year period. We've got three 10-year periods. If we take the middle 10-year period—

Mr. BERGER. Which is?

Senator CONRAD. Which is 1966 to 1976. That period, and take the 10-year average, you'll find it very close to the most recent 10-year period. Again, I find us talking past each other.

Mr. BERGER. I will give you some, if you want, explanations. I can give you that. It has been a very dry period in the last 6, 7, 8 years in the prairies of Canada. Birds have not been finding optimum habitat there. In the past few years, fortunately the Dakotas have been wetter, by comparison, than the prairies of Canada, and the birds have concentrated there.

Also I think if you would look at perhaps a species breakdown of the birds, that pintails and mallards will have declined, and the ones that would have increased would likely have been the scaup, perhaps ringnecks, and other diving ducks which are not as important components in the harvest as pintails and mallards.

Senator CONRAD. Well, for 1987 for example, the mallard number is higher than any year for 1966 to 1976 with the exception of three. But we've got to move on. I appreciate your testimony.

Mr. BERGER. Thank you for the opportunity.

Senator CONRAD. Hopefully through this dialog we can advance the process.

Mr. BERGER. Thank you.

Senator CONRAD. Sid Moss, the president of the National Association of State Foresters.

**STATEMENT OF SID MOSS, STATE FORESTER OF MISSISSIPPI, AND
PRESIDENT, NATIONAL ASSOCIATION OF STATE FORESTERS
[NASF]**

Mr. Moss. Thank you, Mr. Chairman, and members of the committee. I am the State Forester of Mississippi and also the president of the National Association of State Foresters. In that capacity I represent the State forestry organizations of the 50 States and 3 U.S. territories. Our primary responsibility is to conduct forestry work for the public good on State and privately owned lands in our respective States.

I know time is limited today, and I would simply like to highlight our experiences with the programs of the 1985 farm bill in the areas where we think there are needs to be considered and some work done.

I would like to ask that my entire statement be submitted for the record.

Senator CONRAD. Without objection, so ordered.

Mr. Moss. I want to say that the National Association of State Foresters do support Senator Nunn's bill. However, today we will talk about addressing administrative changes in the current farm bill.

Overall, the NASF is very pleased with the efforts of the conservation programs of the 1985 farm bill. We have worked for many years to encourage reforestation and sound forest management. The most recent signup reflected important changes in the program to increase incentives for tree planting. We feel this is a step in the right direction. We would like to thank members of this committee that worked to have these changes included in time for the sixth signup.

Trees while not suitable for all land types are cost effective when compared to most traditional farm subsidies. They provide wildlife habitat, protection from nonpoint source pollution when planted as filter strips and can provide the farmer with future income with properly managed timber harvesting.

In addition, tree planting as a conservation practice will probably last beyond the 10-year limitation of the CRP Program. Trees are not easily plowed out when a program ends as exhibited by the Soil Bank Program of the 1950's and because of their income potential provide the farmer with an incentive to keep the land in trees.

The majority of our concerns for increasing incentives for tree planting were addressed by Secretary of Agriculture Lyng's most recent changes. However, we have the following suggestions.

TREE PLANTING ACROSS THE UNITED STATES

The establishment of trees as a conservation practice is frequently more costly than other types of ground cover, especially in the Western and Midwestern regions of the United States. The Southeastern United States has gotten a high signup in trees under the CRP Program. We would like to see some administrative changes made to aid other regions of the country.

One, we would like to see a one-time bonus for tree planting similar to the previously offered corn bonus.

Two, we would like to allow tree planting to be spread out over a period of 2 or 3 years to alleviate the high establishment costs for tree planting.

Three, we encourage the ASCS to cost-share supplemental watering for tree planting, primarily in the case of windbreaks and filter strips.

Four, we would encourage ASCS to cost-share the difference in establishment costs for the reestablishment of trees planted for windbreaks, shelterbelts, filter strips, and wildlife plantings from previously established grass cover.

Five, we would like to direct the Secretary of Agriculture to extend the rental payment time from 10 to 15 years for hardwoods.

All of the previously mentioned suggestions can be made administratively and do not require legislation.

BOTTOMLAND HARDWOOD INITIATIVE

Wetlands that have already been cleared for crop production need to be included in the farm bill program. Most of these lands produce only one crop every 2 or 3 years, and production is marginal at best. While this land is not highly erodible, as the current criteria requires, it is causing damage to the soil and surrounding lands through nonpoint source pollution and degradation of wildlife habitat.

These wetlands classified by the Soil Conservation Service as 4W and 5W soil types are best suited for growing hardwood trees. Many of the wetlands currently in agricultural production were originally bottomland hardwood stands and should be returned to their natural state.

Therefore, we would like to propose a bottomland hardwood initiative to address this problem. The program would be implemented in a similar manner to the CRP, but would remove wetland, land classes 4W and above, from agricultural production if the land was returned to bottomland hardwoods.

In my State of Mississippi, there are over 837,000 acres of cropland in the 4W and 5W classification. Many Southern States have comparable acreage. Nationwide 9.5 million acres are classified as 4W and 5W. I have included a breakdown of these lands by State in my prepared statement.

NO AMENDMENTS TO SODBUSTER AND SWAMPBUSTER

Finally, we strongly encourage the committee to avoid amending the sodbuster and swampbuster provisions of the 1985 farm bill. We believe that the appeals process currently in place is adequate to address the individual cases that warrant exceptions.

Thank you, Mr. Chairman.

[The prepared statement and attachment of Mr. Moss follow:]

**STATEMENT OF SID MOSS, PRESIDENT
NATIONAL ASSOCIATION OF STATE FORESTERS**

BEFORE THE

**SUBCOMMITTEE ON AGRICULTURAL RESEARCH,
FORESTRY, & GENERAL LEGISLATION
OF THE
SENATE AGRICULTURE COMMITTEE**

MARCH 24, 1988

Mr. Chairman, members of the Committee, I am Sid Moss, State Forester of Mississippi and President of the National Association of State Foresters (NASF).

The members of the NASF are the directors of the state forestry agencies of each state. The primary responsibility of their agencies is to conduct forestry work for the public good on state and privately-owned forest land in their respective states. They work cooperatively with private, federal, and other state agencies, organizations and individuals in directing and strengthening all forestry programs within their states, including conservation programs of the 1985 Omnibus Farm bill.

We welcome this opportunity to appear before you to discuss the importance of conservation programs of the 1985 Farm Bill. The NASF believes that there is no conservation issue more important than the Conservation Reserve Program authorized by this bill. The program is now in place and working well and has demonstrated that it is cost-effective in reducing both soil erosion and surplus agricultural commodities. In addition, acres planted to trees will provide badly needed long-range timber production and other environmental benefits.

Farmers should be encouraged to plant trees on all acres suited to tree growth because forest cover is more permanent than other vegetation. Grass cover can easily be returned to crop production once the ten-year CRP contract has expired. In contrast, much of the land planted in trees under the 1950's Soil Bank program is still in trees. It is highly unlikely that CRP land planted to trees will return to row crop production.

Tree planting is also important in preventing and reducing soil erosion, improving water quality, and contributing to better wildlife habitat. Farming highly erodible cropland requires heavy amounts of chemicals and fertilizers, contributing to water quality degradation and pollution. Trees require less fertilizer-intensive management and will reduce the amount of chemical contaminants.

Additionally, trees are a crop and source of needed raw material. Forestry has become a viable economic component of many farm operations that needs to be recognized and supported. Recent forest inventories and assessments reveal a deficiency of preferred species in some parts of the country which will lead to shortages in the future.

There is no more compelling resource priority than the protection of the soil that we as a nation depend upon, either directly or indirectly, for our food. Also, profitability must be restored to agriculture if it is to survive. Costs must be reduced for this to happen. Forestry has a significant role in both of these arenas.

To date, the Conservation Reserve Program has been very successful. Many acres of highly erodible land have been taken out of production and placed in a category to which they are best suited, namely grass and trees.

While NASF believes that the current mechanisms available under the CRP have been successful in removing highly erodible cropland from production, we also believe that there may be other opportunities for conservation not tapped by the current program. Further, we recommend that no amendments be made to the current legislation at this time. NASF would prefer that any necessary changes be made through administrative regulations or rule-making similar to the recent changes for tree planting issued prior to the sixth signup. We believe that the following changes should be made, if at possible, through the Secretary of Agriculture.

However, if the bill is reopened for amendments, we would encourage legislation to enact additional conservation provisions.

The NASF is very appreciative of the new incentives for tree planting issued by Secretary of Agriculture Lyng and commend the members of this committee in their efforts to bring about these important changes. It is my understanding that this sixth signup came close to the 12.5 percent goal for tree planting in the CRP. However, the overall figures for the first six signups are still short of this 12.5 percent goal.

TREE PLANTING ACROSS THE U.S.

The establishment of trees as a conservation practice is frequently more costly than other types of ground cover, especially in the western and midwestern regions of the United States. The southeastern U.S. has gotten a high percentage of the tree acreage under the CRP program. We would like to see some administrative changes made to aid other regions of the country.

1. Offer a one-time bonus for tree planting, similar to the previously offered corn bonus.

2. Allow tree planting to be spread out over a period of 2 or 3 years to alleviate the high establishment costs for tree planting.
3. Encourage ASCS to cost-share supplemental watering for tree planting, primarily in the case of windbreaks and filter strips. This problem is severely limiting tree planting in the western U.S.
4. Encourage ASCS to cost-share the difference in establishment costs for the re-establishment of trees planted for windbreaks, shelterbelts, filter strips, and wildlife plantings from previously established grass cover. Staffing and time constraints at the local level in the first two signups encouraged landowners to put land in grass. SCS should be allowed to revisit these lands, and where appropriate, recommend conversion to trees for windbreaks and wildlife plantings. Had time permitted, these lands would have been placed in trees originally.
5. Direct the Secretary of Agriculture to extend the rental payment time from ten (10) to fifteen (15) years for hardwoods.

The above suggestions can all be implemented through administrative changes, and do not require legislation.

BOTTOMLAND HARDWOOD INITIATIVE

In many states, there is a class of land which should not be in farmland and is not addressed by the CRP or Swampbuster provisions. These are wetlands, which were cleared for crop production. Most of these lands produce only one crop every two or three years and production is marginal at best. While this land is not highly erodible, as the current criteria requires, it is causing damage to the soil and surrounding lands through non-point source pollution and degradation of wildlife habitat.

NASF would like to propose a bottomland hardwood initiative to address this problem. This initiative would be implemented in a similar manner to the current CRP program, but would entail removing "wet" land from agricultural production. While the Swampbuster program forbids farmers from plowing out any new wetlands, there is no provision to encourage conservation on already cultivated wetlands. By wetlands, we refer to land classifications 4w and above. This initiative would allow farmers in land classes 4w and above to remove the land from production and become eligible for CRP payments if the land was put in bottomland hardwoods. Many of the wetlands currently in agricultural production were originally bottomland hardwood stands and should be returned to their natural state.

These wetlands, classified by the Soil Conservation Service as 4w and 5w soil types, are best suited for growing hardwood trees. For example, Mississippi has over 837,700 acres of cropland in 4w and 5w classifications. Many southern states have comparable acreage in these classifications. Nationwide, 9,514,300 acres are classified as 4-5w. I have included a breakdown of these land classifications for the United States (attachment A).

In addition, properly maintained and managed bottomland hardwood stands could stimulate rural economies. The eventual harvesting of these trees provides a badly needed alternative income in light of declining farm prices. While the timber may not be immediately harvested, the interim years could provide income to the farmers through hunting and fishing use. Farmers could generate income from their hardwood stands by renting campsites and fees to allow hunters access to their property.

It is our hope that 4w and 5w lands will be included in CRP. We feel this is an essential category to further reduce production on "marginal" cropland. This proposed change would help increase the tree total in CRP while increasing wildlife habitat, protecting water quality, aiding wetland restoration and providing farmers with a new agricultural crop.

NO AMENDMENTS TO SOD AND SWAMPBUSTER

Finally, we strongly urge the committee to avoid amending other sections of the 1985 Farm bill, such as Sodbuster and Swampbuster. These provisions are important tools to prevent the cropping of marginal land. While we understand that there are individual cases that warrant exceptions, we believe that the appeals process currently in place will provide the necessary alternatives for these cases.

NASF Testimony - CRP Oversight - Attachment A

State	2w	3w	4w	5w	6w	7w
01 AL	534.1	146.6	216.5	45.0	0.0	0.0
04 AZ	0.8	0.0	0.0	0.0	0.0	0.0
05 AR	1,728.7	3,834.7	582.9	28.4	0.0	0.0
06 CA	811.5	1,107.9	252.5	1.8	8.7	18.7
08 CO	87.2	210.1	99.0	80.6	104.7	8.8
09 CT	40.5	8.1	1.7	0.0	0.0	0.0
10 DE	53.9	100.3	3.4	1.1	0.0	0.0
12 FL	62.5	1,132.1	401.2	5.8	7.0	113.9
13 GA	527.9	215.3	83.5	96.3	0.0	0.0
15 HI	3.3	8.2	0.0	0.0	0.0	0.0
16 ID	86.6	215.1	130.3	54.3	6.6	2.7
17 IL	8,158.2	2,079.2	148.9	64.3	1.2	0.0
18 IN	7,063.6	848.6	120.3	13.5	1.1	0.0
19 IA	6,916.8	1,003.1	147.2	71.4	0.0	1.3
20 KS	1,318.8	405.9	60.8	73.9	82.5	5.5
21 KY	651.3	441.9	37.5	0.7	0.0	0.0
22 LA	1,479.1	3,466.1	448.8	114.7	0.0	1.0
23 ME	193.0	43.0	65.0	0.0	0.0	0.0
24 MD	206.8	237.9	22.1	13.0	3.3	0.0
25 MA	54.3	16.8	17.8	12.1	1.2	0.0
26 MI	3,095.2	1,165.2	168.1	38.3	15.4	8.0
27 MN	7,169.6	2,059.8	566.6	34.1	64.5	11.9
28 MS	2,248.0	1,916.2	644.8	192.9	2.4	0.0
29 MO	3,258.8	1,899.7	15.8	38.5	0.0	0.0
30 MT	8.0	205.3	111.8	83.3	132.2	39.9
31 NE	1,491.4	464.1	173.9	41.5	115.9	3.9
32 NY	161.4	73.3	31.5	53.4	71.7	19.4
33 OH	18.0	14.6	7.4	0.8	0.0	1.2
34 NJ	128.4	97.9	17.8	22.4	4.6	0.0
35 NM	15.2	3.0	15.6	0.4	1.2	0.0
36 NY	767.5	1,470.7	212.7	54.8	2.5	0.0
37 NC	1,007.4	1,124.4	215.2	2.3	33.9	37.1
38 ND	931.7	320.4	558.8	268.6	30.4	0.0
39 OH	5,302.6	1,649.5	47.1	8.5	0.0	0.6
40 OK	942.9	172.3	17.2	106.0	3.0	0.0
41 OR	534.3	286.1	211.1	72.0	27.9	9.5
42 PA	334.3	607.7	143.3	15.4	11.6	0.0
44 RI	6.8	1.5	0.0	0.5	0.0	0.0
45 SC	727.8	358.4	45.7	2.7	12.8	1.7
46 SD	654.1	184.3	302.8	74.0	54.2	0.0
47 TN	1,088.7	448.9	127.4	47.3	0.0	0.0
48 TX	2,468.0	2,164.9	196.3	345.7	82.0	0.0
49 UT	118.6	133.0	85.4	28.4	10.5	11.6
50 VT	69.9	67.5	62.5	2.9	0.8	0.3
51 VA	321.0	181.7	45.1	12.5	19.7	0.9
53 WA	250.9	193.7	33.2	11.1	20.3	0.7
54 WV	179.7	51.5	4.3	8.4	2.7	0.0
55 WI	1,614.9	384.5	166.5	33.9	193.4	0.0
56 WY	35.1	59.7	118.1	45.5	51.1	0.0
72 PR	27.1	13.0	5.9	0.0	0.0	0.0
78	64,951.8	33,291.7	7,191.3	2,323.0	1,181.0	298.6

Figures obtained from the Soil Conservation Service -- NRI Data, 1987

Senator CONRAD. Thank you very much, Mr. Moss.
 Senator FOWLER. Mr. Baron.

**STATEMENT OF WAYNE BARON, DIRECTOR, PRAIRIE WETLANDS
 RESOURCE CENTER, NATIONAL WILDLIFE FEDERATION,
 WASHINGTON, DC; ACCOMPANIED BY DR. RAY LINDER, PRO-
 FESSOR EMERITUS, SOUTH DAKOTA STATE UNIVERSITY, AND
 JANICE L. GOLDMAN-CARTER, COUNSEL, FISHERIES AND
 WILDLIFE DIVISION, NATIONAL WILDLIFE FEDERATION**

Mr. BARON. Senator, my name is Wayne Baron, and I am the director of the National Wildlife Federation Prairie Wetlands Resource Center in Bismarck, North Dakota. With me today to answer any specific questions you might have are Dr. Ray Linder, professor emeritus from South Dakota State University, an expert and authority on prairie wetlands and their values; and Janice Goldman-Carter, counsel in the fisheries and wildlife division of the National Wildlife Federation.

The National Wildlife Federation represents over 4.8 million members and supporters who are concerned about wetlands. We appreciate the opportunity to testify today.

The National Wildlife Federation was founded over 50 years ago. One of the primary reasons for our founding was the dramatic decline of wetlands and waterfowl populations during the 1930's. A half a century later we are still facing unacceptable losses of both resources. This decline must be addressed.

Last year the National Wildlife Federation opened its Prairie Wetland Resource Center in North Dakota because that State played such a major role in the health and vitality of our continental waterfowl populations.

In 1985, we lobbied for passage of swampbuster for this reason and because 80 percent of all wetlands destruction is caused by agricultural conversion. Effective enforcement of swampbuster provisions is necessary to halt this trend. What happens to North Dakota wetlands directly affects most of American's waterfowlers, birdwatchers, and other conservationists.

We call the prairie pothole region 'America's duck factory' for good reason. Prairie potholes are the most valuable inland marshes for waterfowl production in North America.

I want to put today's discussions into perspective. Sixty percent of the wetlands in North Dakota have already been destroyed. Today we are discussing what to do with the remaining 40 percent. Ninety-three percent of wetlands within the Nation are in private ownership and are vulnerable to destruction.

In 1985, waterfowl populations dropped to their lowest level in recorded history and have yet to recover today. The hearing today will propose actions that could break the backbone of waterfowl populations in the Nation. The reason is simple. Habitat loss.

Efforts are underway to eliminate temporary wetlands from the act or eliminate protection for wetlands that were cropped between 1981 and 1985. Either of these actions would be a critical mistake. Each type of wetlands plays an intricate part in waterfowl production.

By using cropping history, not only type 1 wetlands but a large portion of type 3's and a limited portion of type 4's have no protection. We estimate 20 to 30 percent of the wetlands in North Dakota, between 200,000 and 300,000 acres would be eliminated from swampbuster protection.

In Minnesota, 33 percent of prairie wetlands are seasonally flooded. Any change made in wetlands definition or basing wetlands definition on cropping history will bring new direct drainage pressure over what presently exists.

Wildlife alone is far from the only value provided by prairie pot-holes. Flooding is a substantial problem in North Dakota especially for agriculture. Scientific studies have demonstrated that these wetlands play a substantial role in reducing the damage from flooding because they store excess waters and slowly release them over a gradual period of time.

When these wetlands are gone, the water has nowhere else to go but on our farms, homes, and property. The flood control value of wetlands were recently recognized by South Dakota's Governor Mickelson, who endorsed the proposal to pursue restoration of 26,000 acres of wetlands for flood control. The National Wildlife Federation is joined with the State of South Dakota and the Fish and Wildlife Service in developing a comprehensive plan to restore wetland acres within the watershed.

Swampbuster should play a major role in conserving these wetlands from agricultural conversion but has not done that. Instead wetland conversion has increased since the act was passed. Worse, hundreds of violations have been brought to the attention of ASCS yet not one producer has been declared ineligible for farm program benefits in the entire State. This situation results directly from ASCS's disorganized approach to swampbuster. ASCS has failed to provide objective information to farmers about swampbuster and wetlands. ASCS's past reluctance to correctly interpret and enforcement of swampbuster in North Dakota has rendered the act ineffective.

However, we see signs of improvement. As we speak, SCS has continued mapping in North Dakota to provide farmers with objective information about the location of wetlands on their property. Also ASCS, SCS, and the Fish and Wildlife Service are developing procedures for cooperation in obtaining information on wetlands designation, prospective violations and the act's exemptions.

There is substantial interagency cooperation in neighboring Minnesota and South Dakota. Also SCS has made a concerted effort to provide wetlands delineations for farmers in that State. Indeed, Minnesota counts for over two-thirds of all swampbuster determinations in the entire country. Therefore, we believe a sound administrative program of interagency cooperation and public information will go a long way toward defusing opposition to swampbuster.

We are also encouraged by the introduction of Senate bill 2143 by Senators Boschwitz, Burdick, and Conrad. It is, indeed, a compromise that will offer advantages to farmers and the environment alike. We must, however, not enact Senate bill 2143 in tandem with any weakening amendments to swampbuster. It would be indefensible to offer temporary protection on wetlands on the one hand and on the other side subsidize drainage of them.

Before excluding any wetlands from swampbuster, we should step back and recall why Congress passed the statute. One, there is a surplus of agricultural production in this country according to the House Committee on Agriculture. Two, wetlands are an important resource that is being destroyed at a rate of at least 400,000 acres per year; and third, the Federal budget deficit speaks for itself.

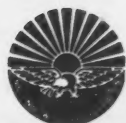
The American taxpayer does not want to subsidize the destruction of one resource that is getting scarcer every year, wetlands, in order to create another resource that we already have too much of, agricultural production.

Such a move is clearly out of step with the prevailing fiscal and environmental mood of the country. I might also add that the legislative intent is clear on swampbuster, for example, that of committee report of the House Merchant Marine and Fisheries Committee.

Thank you.

[The prepared statement, exhibits A, B, and C, with attachments, and responses to questions from Senator Conrad of Mr. Baron follow:]

Working for the Nature of Tomorrow



NATIONAL WILDLIFE FEDERATION

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Statement of the National Wildlife Federation et al.

**Before the Subcommittee on Conservation and Forestry
of the Senate Committee on Agriculture**

**on the Wetland Conservation Provisions of the Food
Security Act of 1985,
Title XII, Subtitle C ("Swampbuster")**

by

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March 24, 1988

Submitted on behalf of the following organizations:

**National Wildlife Federation
Natural Resources Defense Council
Environmental Defense Fund**

On behalf of the National Wildlife Federation, the Natural Resources Defense Council and the Environmental Defense Fund, we submit the following comments on the "Swampbuster" provisions (Title XII, Subtitle C) of the Food Security Act of 1985 for inclusion in the record of the Subcommittee on Conservation and Forestry of the Senate Committee on Agriculture, during oversight hearings held March 24, 1988.

The National Wildlife Federation (NWF), a strong supporter of Swampbuster during passage of the Food Security Act of 1985, today reaffirms its ardent support for the protection of our Nation's wetland resources. The world's largest not-for-profit conservation-education organization, the NWF has over 4.8 million members and supporters, with affiliated organizations in 49 states, the Virgin Islands and Puerto Rico.

A long-standing supporter of the Food Security Act's conservation provisions, the Natural Resources Defense Council (NRDC) is a national nonprofit corporation with more than 77,000 members and contributors, dedicated to the preservation, enhancement and defense of the world's natural resources. Through several of its programs, the NRDC promotes a clean, healthy and productive rural environment across the United States.

The Environmental Defense Fund (EDF) is a national nonprofit organization that has been active for over 20 years in the protection of wetlands, wildlife and other environmental

resources. The EDF has approximately 50,000 members from all states of the U.S., and maintains offices in seven cities.

INTRODUCTION

On December 23, 1985 Congress took a dramatic and much-needed step, effectively declaring that America's taxpayers would no longer fuel the destruction of wetlands through agricultural subsidies. Congress understood that subsidizing wetlands destruction is inconsistent with well-established national policy to protect our valuable but declining wetlands resources.¹ It simply makes no sense to encourage agricultural conversion of wetlands, especially considering the burdens this policy adds to the national debt.

More than two years have passed since the adoption of "Swampbuster" provisions of the Food Security Act of 1985 (FSA), yet enforcement of these provisions remains largely nonexistent. The pace of agricultural conversion of wetlands has not slowed appreciably since Swampbuster was passed, and only two producers in the entire United States have lost eligibility for benefits under the Act, to our knowledge. Despite this dismal record, farmers, farm groups and their elected officials are now calling for dramatic reduction of Swampbuster's coverage.

¹For example, Section 404 of the Clean Water Act, 33 USC 1344; the Emergency Wetlands Resources Act, Pub. L. No. 99-645.

This opposition is strongest in the State of North Dakota, a state in which Swampbuster could potentially protect thousands of acres of valuable wetlands. These wetlands have a truly national and international value as breeding areas for migratory waterfowl, and provide farmers important flood control and groundwater recharge benefits. Yet, agricultural conversion of wetlands in that state has actually increased since Swampbuster's passage, and not one producer in the state has lost program eligibility due to Swampbuster.

The application of Swampbuster is inconsistent and ineffective for two reasons: (1) lack of enthusiasm for enforcement of the law within the U.S. Department of Agriculture (USDA), and (2) political pressure on USDA to refrain from enforcing the Act.

We are concerned that Swampbuster is not working and that, not only farmers, but officials within USDA as well, are attempting to use these hearings, and others that may be contemplated, to reduce Swampbuster's scope without amending the law.

In order for Swampbuster to protect wetlands effectively, it must be implemented in a comprehensive, uniform manner. Indeed, nonexistent enforcement of Swampbuster will only exacerbate agricultural economic problems because it puts the honest, law-abiding farmer at a competitive disadvantage with the farmer who drains wetlands for crop production and continues to receive subsidies.

The NWF, NRDC and EDF joined other conservation and farm organizations in lobbying vigorously for enactment of Swampbuster because the legislation is needed, makes sense, and is amply justified. We strongly feel that Congress should not second-guess itself until the law has had an opportunity to work.

WHY CONGRESS PASSED SWAMPBUSTER

Congress adopted Swampbuster to address the massive destruction of wetlands resulting from agricultural drainage. In reporting the 1985 Farm Bill the House Committee on Agriculture, recited facts beyond dispute: wetlands are valuable for wildlife habitat, aquaculture, flood control, water purification, groundwater recharge, and recreation. H.R. Rep. No. 99-271, Part I 99th Cong., 1st Sess. 86-87 (1985). The Committee described the problem facing Congress and the Nation:

Currently, wetlands are being destroyed at a rate that is environmentally unacceptable [N]early 14.7 million acres of freshwater wetlands and approximately 500,000 acres of saltwater wetlands have been destroyed from the mid-1950s to the mid-1970s.

Much of the wetlands lost in recent years can be attributable to conversion to agricultural uses. At the present time of surplus agricultural production there is certainly no need for the conversion of more resources into agricultural production especially when those wetlands resources have such inherent value and provide such practical benefits as discussed above.

Id.

The House Committee was well advised to express this concern because in 1984 Congress' Office of Technology Assessment estimated that 80 percent of all freshwater wetland destruction resulted from agricultural conversion. Office of Technology Assessment, Wetlands: Their Use and Regulation 108 (1984).

This Subcommittee need not take our word for the need for Swampbuster. The Congress addressed the issue and in 1985 concluded that subsidized agricultural conversion of wetlands is bad fiscal and environmental policy in this day and age of surplus agricultural production, fiscal responsibility, and conservation awareness.

Moreover, nothing has changed about wetlands destruction since Congress passed Swampbuster. The U.S. Fish and Wildlife Service (FWS) has estimated an annual average loss of 458,000 acres of wetlands between 1955 and 1975. U.S. Fish and Wildlife Service, Wetlands of the United States: Current Status and Recent Trends 31 (1984) ("Wetlands Status and Trends"). There is no evidence to suggest the trend has slowed. Therefore, the only difference between today and the passage of Swampbuster in 1985 is the loss of an additional 900,000 acres of wetlands.

IMPLEMENTING REGULATIONS FOR SWAMPBUSTER

When Congress enacted Swampbuster in 1985, it directed the Secretary of Agriculture to promulgate regulations by June, 1986. 16 USC 3844. To meet that deadline, USDA published "interim" regulations, 51 Fed. Reg. 23496 (June 27, 1986), which were then supplemented by field manuals and oral

communications to local officials in the Agricultural Stabilization and Conservation Service (ASCS) and the Soil Conservation Service (SCS) charged with administering the law.

Farmers learned early in 1986 that they had to certify any drainage plans on USDA forms (AD-1026) in order to receive federal farm benefits. At the same time, local ASCS and SCS personnel were put in the position of requiring compliance from farmers whom they had previously assisted with voluntary programs. Neither the "regulators" nor the regulated agricultural community were happy in their new roles and gave the law little attention.

Political pressure to weaken the Act was translated into field guidance which interpreted the vague interim rules to exempt significant wetland conversion from the impact of the law. Where the law could not be side-stepped through interpretation, it was simply ignored by local officials and farmers. This open disdain for Swampbuster implementation was, and continues to be, most apparent in the prairie pothole states.

Because the interim rules were viewed as temporary, USDA staff in Washington, D.C. focused immediately on developing final rules. In the meantime, local ASCS and SCS officials, themselves members of the local agricultural community, were able to enforce or ignore Swampbuster as they saw fit. Consequently, implementation during the 1986 and 1987 growing seasons was extremely variable, and generally lax.

This picture of administrative inertia changed superficially when the Final Rules were published in September, 1987. 52 Fed. Reg. 35194 (Sept. 17, 1987). These rules were the product of considerable inter-agency haggling among ASCS, SCS, FWS, the Office of Management and Budget, and, to some extent, the Environmental Protection Agency (EPA). Conservation groups, including the National Wildlife Federation, supported FWS in pushing for strong final rules. The final rules were detailed and more stringent, and seemed to send a signal that USDA headquarters genuinely intended to implement Swampbuster, that the law was here to stay, and the field representatives and the agricultural community should obey the law.

Since issuance of the final rules, SCS and ASCS seem to have made a concerted effort to provide uniform training to their state-level officials in Swampbuster implementation. We believe this training has reinforced the strong message sent by the final rules. The agencies are relying upon those state officials, in turn, to train county-level staff. The speed and effectiveness of such trickle-down training will be a critical factor in assessing Swampbuster implementation over the next few years.

SWAMPBUSTER IMPLEMENTATION TO DATE

The real test of Swampbuster's effectiveness will come during the 1988 and future growing seasons. The record so far looks dismal. Though ASCS and SCS have not accumulated

any records or statistics evaluating the program, the available information is disturbing.

Wildlife professionals and local landowners have documented increased wetland drainage throughout North Dakota, South Dakota, and Minnesota during 1987. Drainage proponents have admitted that drainage has increased.

In South Dakota, over 272 potential Swampbuster violations have been reported yet no benefits have been withheld. In Minnesota, SCS personnel admit that 20 percent, or 3,000 landowners, are presently in violation of Swampbuster, yet, to our knowledge, only one producer in the state has had benefits withheld.

The Swampbuster record is decidedly mixed at this point. However, with time, USDA support, and objective educational efforts, Swampbuster can be a success. A more detailed regional view of Swampbuster administration follows.

Minnesota

Swampbuster implementation in Minnesota shows some signs of improvement due to recent inter-agency agreements to increase consultation between the ASCS, SCS, and FWS. However, despite positive changes in procedure, Swampbuster violations continue to go unenforced.

In the Spring of 1987, the FWS regional and state Swampbuster coordinators began documenting potential violations and administrative gaps in Minnesota and began working to resolve them. This effort seems to have resulted in substantial, positive changes in the Swampbuster program.

ASCS has agreed to forward all information received from farmers indicating potential wetland drainage so the SCS can determine whether the area in question meets Swampbuster's definition of "wetland." Previously, ASCS county offices were advising farmers that effects on wet areas need not be reported, and many wetlands were drained without an SCS wetland determination.

The final USDA regulations do not expressly require consultation at the critically important county level, where the ASCS determination of exemption is actually made. 52 Fed. Reg. 35204, to be codified at 7 CFR 12.6(b)(3)(viii) & (ix). However, the ASCS agreed to consult with FWS at the county and state levels on all determinations regarding two Swampbuster exemptions: actions commenced before the effective date of the Act, and third-party drainage. See 16 USC 3822(a)(1) (commencement); 52 Fed. Reg. 35203 (third party). Commencement determinations are particularly critical because they provide the broadest exemption from Swampbuster sanctions. This change should result in more efficient, more consistent, and more justifiable determinations by ASCS county committees.

SCS agreed to consult with FWS at the district, area, and state levels on controversial wetland determinations and determinations under the "minimal effect" exemption. 16 USC 3822(c). Again, these determinations are critical to whether a given wetland is protected by Swampbuster, and FWS consultation at the local level should result in increased wetland protection.

Finally, SCS district offices in Minnesota made over 12,000 Swampbuster wetland delineations in Fiscal Year 1987.

all of which were referred to them by ASCS through the Form AD-1026 Certification process. According to the FWS, this figure represents over two-thirds of all such wetland determinations made nationwide.

We strongly support these efforts and changes in the program's administration in Minnesota. We commend USDA's willingness to cooperate in making Swampbuster more effective.

While consultation procedures have improved, the results of that consultation have not. The FWS reports that SCS and ASCS may be excluding as many as 70 percent of Minnesota's ~~remaining~~ prairie potholes as not subject to Swampbuster, and therefore not even subject to consultation with the FWS (Exhibit A).² Where consultation has occurred, the FWS has described it as "continual hair-splitting that accommodates more drainage." (Exhibit B).

FWS personnel noted a substantial increase in drainage activity in the fall of 1987 (Exhibit A). The SCS has admitted that, while Minnesota landowners have requested a laudable 15,000 wetland determinations through the Form AD-1026, another 15,000 drainage cases should have been reported to the SCS for determinations but were not. Thus, fully one half of the wet areas drained by farmers in Minnesota have never even reached the SCS for a wetland determination.

² Exhibits A through C are attached at the end of this testimony.

Furthermore, the SCS estimates that 20 percent, or 3,000 landowners in Minnesota are presently in violation of Swampbuster (Exhibits A,B). Despite this level of non-compliance, we are only aware of one Minnesota farmer who has lost benefits due to non-compliance with Swampbuster. This farmer is one of only two farmers in the nation to have lost benefits since Swampbuster was enacted.³

Though Swampbuster coordination shows some signs of improvement in Minnesota, wetland drainage continues unabated. For Swampbuster to work, Congress and USDA headquarters must send a strong and consistent message to the ASCS and SCS field personnel and the agricultural community that this law must be strictly implemented.

North Dakota

Swampbuster has been a failure in North Dakota, primarily due to pressure from drainage proponents. In North Dakota, enforcement ranges from ineffective to non-existent, while wetland drainage has escalated. This accelerated drainage has resulted from antagonism of farmers toward Swampbuster. Some farmers are draining wetlands now for fear that someday Swampbuster will be effective in North Dakota.

In November, 1987, North Dakota Congressman Byron Dorgan held meetings in North Dakota to discuss Swampbuster. At these meetings, farmers and farm organizations turned out in

³ To our knowledge, only two producers have been sanctioned under Swampbuster, one in Minnesota and one in Georgia.

large numbers and expressed heated antagonism toward having federal officials (ASCS, SCS, and FWS) "looking over their shoulders" and having a say in what owners do on their land (even though they are doing it with federal taxpayer's assistance). These groups also expressed frustration over ASCS and SCS delays and inconsistencies in implementation. These frustrations are shared by the conservation community.

A primary goal of the farm groups in North Dakota is to exempt temporary wetlands from Swampbuster sanctions. Position Paper of North Dakota Farmers Union, et al. 1987. Other measures have been proposed which essentially would eliminate Swampbuster sanctions for conversion of prairie potholes. Id. The reaction of ASCS and SCS to this type of pressure has been to ignore or compromise on enforcement on the premise that strict enforcement will result in pressure to amend or repeal the law.

There has, in fact, been no enforcement of Swampbuster in North Dakota. While FWS alone reported over 150 potential Swampbuster violations to North Dakota local ASCS offices in 1986, ASCS acknowledges receipt of only 83 reports from all sources, including neighboring farmers. Although at least 23 ASCS county offices received reports of potential violations, only three made any attempt to field check reported violations. In four counties and at least 15 instances, ASCS contacted farmers with potential violations and were told the work was simply to clean out existing drains. These ASCS county offices have not field checked any of these drains, apparently accepting the producer's determination at face value. FWS reports similar preliminary results for potential

violations reported to county ASCS offices in 1987
(Exhibit C).

No federal farm benefits have been withheld under Swampbuster in North Dakota. In fact farmers in North Dakota collected \$750 million in federal agricultural subsidies in 1987. The one reported finding of noncompliance in North Dakota did not result in the withholding of farm benefits. Instead, the producer was notified, the drain was closed, and the crop planted on the wetland was destroyed.

Indeed, ASCS has pursued seriously only two other reported potential violations in North Dakota, both of which demonstrate ASCS's abuse of the commencement exemption.⁴ In both cases, the farmers had drained wetlands and planted commodity crops on wetlands after December 23, 1985, the effective date of the statute. The USDA regulations require that commencement must consist of actual movement of dirt to manipulate the hydrologic regime in a wetland or a substantial financial obligation to do the same by entering into contracts for work or purchase of construction materials before passage of the Act.⁵

⁴ Swampbuster exempts farmers from sanctions for production of commodity crops "on converted wetland if the conversion of such wetland was commenced before December 23, 1985." 16 USC 3822 (a) (1).

⁵ USDA regulations provide, in essence, that "commencement" must consist of activities such as draining, filling, dredging, leveling, or otherwise manipulating wetlands to make it possible to produce agricultural commodities therein.

footnote continued on next page

In these two cases, ASCS allowed the exemption even though the producers lacked actual documentation that earth moving had started before December 23, 1985 or that a contract to do such work was entered by that date, despite the requirements of USDA regulations. One farmer admitted to ASCS personnel that no dirt was moved, no contract to move dirt was entered, and no substantial funds were committed for such work before December 23, 1985. The ASCS State Director has acknowledged that the county committee's initial determinations that these two farmers met the exemption were improper. Nonetheless, the State Director upheld the exemption and refused to declare the producers ineligible. Thus the only two potential violations in North Dakota given any sort of review led to no sanctions.

Interestingly, on February 19, 1988, the same ASCS county committee denied a second commenced exemption to one of these same two landowners based on the same information. The FWS was consulted in this more recent determination. This recent determination may reflect an increased willingness to implement Swampbuster in North Dakota.

Other signs of improvement in North Dakota include FWS reports that consultation with the SCS and ASCS is improving, and reports SCS mapping of the Red River Valley has helped to resolve farmers' concerns (Exhibit C). We applaud these

These activities must have actually started before December 23, 1985, or a contract for such work must have been entered or construction supplies purchased by such date. 52 Fed. Reg. 35201 and 35203, to be codified at 7 CFR 12.2(a)(6) and 12.5(d)(1)(vi) and (2)-(3).

recent changes, but caution that they will only continue if Swampbuster is given strong support and a chance to work.

In sum, Swampbuster enforcement in the prairie pothole states has been lax, but shows some sign of improvement. Whether Swampbuster becomes a reality in these states will depend on whether Congress and ASCS and SCS in Washington, D.C stand firm in signaling their commitment to strict Swampbuster enforcement in 1988. Without such a commitment, supported by diligent oversight, farmers and ASCS county committees are likely to continue to ignore the law and press for its repeal. The taxpayer will continue to subsidize the destruction of some of the most valuable wetlands in our Nation.

Swampbuster has not stimulated the reaction in Minnesota and South Dakota that has erupted in North Dakota. This suggests that farmers in North Dakota are overreacting to a program not yet in effect there. A positive program of providing objective, accurate information to farmers coupled with efficient administration is critical to farmer acceptance of Swampbuster. Legislative oversight of Swampbuster should concentrate on USDA's willingness and ability to provide such assistance at this important point in the program.

The Lower Mississippi River Valley

Swampbuster administration in the Lower Mississippi River Valley has also been mixed. FWS coordination with ASCS

on commencement determinations and with SCS on minimal effect determinations has improved with issuance of the final rules. However, ASCS and SCS have declined to report and follow up on potential violations.

On the positive side, there have been at least two substantial bottomland clearing operations in Louisiana proposed or begun by corporate entities which appear to have been stopped to avoid loss of commodity payments. In both these cases, FWS made determinations that the operations would convert wetlands covered by Swampbuster. As a result the clearing plans were dropped, at least temporarily.

THE BATTLE OVER TEMPORARY WETLANDS

The effort to reduce Swampbuster's coverage has focused on the wetland definition, and, in particular, the inclusion of temporary or seasonal wetlands. Three farm groups in North Dakota have expressly advocated elimination of these wetlands from Swampbuster. However, these are some of our most valuable wetlands.

These wetlands are referred to as "Type 1" wetlands because they have been classified in this way in an FWS

document ("Circular 39").⁶ Circular 39 describes Type 1 wetlands as

Seasonally flooded basins or flats
The soil is covered with water, or is waterlogged, during variable seasonal periods but usually is well drained during much of the growing season.

FWS, Wetlands of the United States 20 (1971) ("Circular 39").

Type 1 wetlands may not always appear to the untrained eye to be wetlands because they are usually flooded only during part of the year. They may be dry during most parts of the year, and all year during dry years. Nonetheless, they meet the definition of "wetland" in Swampbuster and their protection from agricultural conversion was a major reason why the NWF, NRDC and EDF supported the passage of Swampbuster.

Opponents of Swampbuster have concentrated their efforts on temporary wetlands. They are attempting to eliminate Swampbuster protection for these wetlands through either: 1) an exemption for Type I wetlands, or 2) an exemption for all wetlands that have been cropped previously. Whether based on cropping history or classification as Type I wetlands, both of these strategies have the same goal:

⁶ Circular 39 is an FWS publication entitled "Wetlands of the United States" first issued in 1956 and republished in 1971. Circular 39 has been updated by FWS' "Classification of Wetlands and Deepwater Habitats of the United States," published in 1979. Despite its venerability, the classification concepts in Circular 39 remain valid.

exemption of a significant portion of our Nation's wetlands from protection under Swampbuster.

Swampbuster explicitly does include temporary wetlands as demonstrated by a review of the law and Congress' actions during enactment of Swampbuster. See pages 26-37 below. Furthermore, we strongly feel that Swampbuster should continue to include these wetlands. First, temporary wetlands provide critical habitat for waterfowl, as well as providing groundwater recharge and flood control. Second, the destruction of these wetlands by agricultural practices continues at an alarming rate. Finally, if temporary wetlands are exempted, not only will 20 to 30 percent of the remaining prairie potholes no longer be protected by Swampbuster, but implementation of Swampbuster for all wetlands in the prairie potholes region and throughout the country will be severely handicapped.

THE VALUE OF WETLANDS

Temporary wetlands were included in Swampbuster for good reason. They are extremely valuable. Indeed, of all the wetlands in the country, the northern plains prairie potholes, of which over 18% are temporary wetlands, are perhaps the most deserving of federal protection for their role in waterfowl production as well as a variety of important hydrological functions.

Waterfowl Production

Prairie potholes represent America's duck factory: "Prairie potholes are the most valuable inland marshes for waterfowl production in North America." *Wetlands Status and Trends*, p. 42. While the Prairie Pothole Region comprises only 10% of North America's waterfowl breeding area, it produces 50% or more of the continent's ducks. ⁷ About 87% of the ducks bred in the lower 48 states breed in the Dakotas, Minnesota, and Montana. Wittmier, "Prairie Potholes: Can We Save Them From The Plow?", *50 Outdoor America* (No. 4), p. 9 (1985) ("Can We Save Potholes?"). Over 93% of the waterfowl produced in North Dakota come from privately owned wetlands. During 1967-69 North Dakota averaged 1.6 million breeding pair of ducks. Waterfowl production in one South Dakota study area averaged 140 ducks per square mile per year. Stewart & Kantrud, "Breeding Waterfowl Populations in the Prairie Pothole Region of North Dakota," *76 Condor* (No. 1) 70 (1974). When drought strikes Canadian breeding areas, the United States and especially North Dakota areas can be crucial to maintaining the continental waterfowl population.

The seasonal variability of pothole inundation is one of the prime reasons why these wetlands are so important to waterfowl. Smaller, shallower potholes are important to breeding pairs because these wetlands thaw early in the spring and provide abundant invertebrates and aquatic plant food. The large number of these small, isolated wetlands also facilitates waterfowl production by permitting breeding pairs to disperse and claim territory, and by reducing the

⁷ Part of the pothole region is located in Canada where it is under the same pressure from agricultural conversion.

risk of disease which is increased when waterfowl are concentrated on shrinking habitat. *Id.* at 43; *Can We Save Potholes?*, p. 9.

Type 1 wetlands are especially critical because they tend to be smaller than other potholes and studies have shown that the number of individual wetlands is more important to duck production than the total number of wetland acreage. Linder & Hubbard, "Wetland Values in the Prairie Pothole Region of North America," in *Proceedings of Great Plains Agricultural Council* (1982). One study found that temporary wetlands, including Type 1 wetlands, composed 35 percent of the wetlands in North Dakota but supported over 57 percent of the breeding population of ducks. U.S. Fish & Wildlife Service, "Use of Shallow Wetlands by Breeding Waterfowl" (unpubl.). During years when there is plenty of water, nearly two-thirds of the breeding population uses these temporary wetlands, including wetlands that have been tilled but not converted in previous years. *Id.* Although these wetlands may hold water for only a short time each year that period is critical to migrating ducks for resting stops and for courtship and egg-laying. U.S. Fish & Wildlife Service, "Wetland Resource North Dakota" (unpubl.).

Although it may seem more convenient to humans to ask or expect the ducks to use more permanently flooded, larger wetlands for all stages of breeding, the ducks simply have not evolved that way. Whether we like it or not, destruction of these Type 1 wetlands means further losses in already declining duck populations. That is inconsistent with the statute because wildlife protection was an express purpose of Swampbuster. H.R. Rep. No. 99-271, 99th Cong., 1st Sess. 87 (1985).

These ducks belong to the Nation. Waterfowl banded in North Dakota, for example, have been recovered in 46 states,

10 Canadian provinces and territories and 23 other countries. Wetlands Status and Trends, p. 1. As recognized by Justice Oliver Wendell Holmes over a half-century ago, these are "birds that yesterday had not arrived, tomorrow may be in another State and in a week a thousand miles away." *Missouri v. Holland*, 252 U.S. 416, 434 (1920).

These birds are money in the bank. In 1980 an estimated \$638 million was spent by hunters pursuing migratory birds. U.S. Fish & Wildlife Service, 1980 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, p.70. Moreover, they are highly valued by the 2 million or so duck hunters found in every state of the Union.

But these birds are in trouble. Duck populations have crashed to their lowest levels in recorded history. The reason, according to FWS, is simple: loss of habitat. U.S. Fish & Wildlife Service, A National Waterfowl Management Plan for the United States 5 (1982). The loss of habitat in the United States precipitating this decline is directly attributable to the agricultural conversion of the highly productive prairie pothole wetlands.⁸

Therefore, pothole conversion in the Dakotas is far from a parochial problem. As Justice Holmes observed, no single state can save our duck populations. However, failure to enforce Swampbuster in just two states, North and South Dakota, can have dramatic impacts on continental waterfowl populations. Only Congress can effectively represent the interest of the entire Nation in preventing federal tax

⁸ Protection of waterfowl wintering habitat is also critical.

dollars from fueling the destruction of prairie potholes. The language employed in Swampbuster and the legislative history defining wetlands could not be any clearer, and the importance of maintaining these seasonal wetlands could not be more critical. Type 1 wetlands can only be read out of the Act by interpretive sleight of hand.

Soil and Water Conservation.

Wildlife is far from being the only or even the most important reason for protecting prairie potholes. Indeed, prairie potholes play a major role in maintaining the viability of agriculture by preventing flooding and recharging groundwater supplies.

Groundwater Recharge

The prairie potholes of the Dakotas are important in recharging groundwater aquifers in this region. Hubbard & Linder, "Spring Runoff Retention in Prairie Pothole Wetlands," 41 Journ. of Soil and Water Conservation (No. 2) 122 (1986). One study in Northeastern South Dakota has estimated that 213 wetlands produced a total minimum recharge of about 12 acre-feet in a 1602-acre area. This volume could irrigate 160 acres with 1.4 inches of water, or supply water for 1,699 head of cattle for 1 year. *Id.*

Because prairie wetlands are hydraulically connected with the water table, their drainage should eventually result in declines in water table elevation. *Id.* The reverse is true

if wetlands are saved. Thus prairie potholes are really savings banks for groundwater when drought strikes, as it often has in the Dakotas, with vicious effects on agriculture. Brun, et al., "Stream Flow Changes in the Southern Red River Valley of North Dakota," 38 North Dakota Farm Research Bimonthly Bull. (No. 5) 11 (1981) ("Stream Flow Changes in Red River Valley").

Flood Control

Flooding is a substantial problem in the Dakotas and can often lead to total destruction of crops and bridges, damage to homes and businesses, and erosion of valuable soils. In Enderlin, North Dakota, major sections of the town have been abandoned to repeated flooding, a phenomenon that has developed in only the last 25 years. Stream Flow Changes in Red River Valley, p. 11. While climate plays a major role in the timing and degree of flooding, potholes reduce flood flows. Drainage of wetlands that would otherwise store excess water is a factor that has aggravated unprecedented flooding in the Southern Red River Valley in North Dakota. Id.; Ludden, et al., "Water Storage Capacity of Natural Wetland Depressions in the Devils Lake Basin of North Dakota," 38 Journ. of Soil and Water Conservation (No. 1) 45 (1983).

Prairie pothole wetlands store spring snow melt and storm runoff and thereby moderate flooding in the Dakotas. The 213 small wetlands in the 1602-acre South Dakota study area discussed above retained a minimum of 158.7 acre-feet of water during the spring thaw. Drainage of these wetlands would contribute to flooding at lower elevations in the watershed under certain conditions. Id. Prairie potholes in

the Devils Lake Basin of North Dakota have a maximum storage capacity of 657,000 acre-feet, and retain 72% of the total runoff of a 2 year event. These potholes would retain about 41% of the total runoff of a 100 year event. Ludden, et al., "Water Storage Capacity of Natural Wetland Depressions in the Devils Lake Basin of North Dakota," 38 Journ. of Soil and Water Conservation (No. 1) 45 (1983). Drainage of these wetlands could significantly affect flooding in the Devils Lake Basin.

In South Dakota the flood control value of wetlands was recognized when, on December 8, 1987, Governor George S. Mickelson endorsed a proposal by NWF's Prairie Wetland Resources Center for the restoration of over 26,000 acres of drained wetlands to alleviate flooding from Lake Thompson--flooding which probably resulted from the destruction of these same wetlands. Floodwater runoff raised the lake each year and caused serious local flooding.

WETLAND LOSSES

Congress was well advised to ensure that temporary wetlands were included in Swampbuster because these wetlands remain significantly threatened by this conversion. Originally, the prairie pothole region of the Dakotas and Minnesota had 17 million acres of prairie wetlands. According to FWS's National Wetlands Inventory, only 5.3 million acres remain today. North and South Dakota have lost 60 percent and 35 percent of their prairie wetlands, respectively. Most of this destruction was caused by conversion to farming. Wetland Status and Trends, p. 42. Prairie pothole destruction continues today at the rate of 33,000 acres per

year. Id. Type 1 wetlands are 18 percent of remaining United States prairie wetlands acreage, totaling nearly one million acres. U.S. Fish & Wildlife Service, "Wetland Resource North Dakota" (unpubl.).

About eighty percent of the remaining wetlands in these three states are in private ownership, according to the National Wetlands Inventory. Twelve percent of the 4.9 million non-federal wetland acres in the prairie potholes of the Dakotas and Minnesota, or about 588,000 acres, have a moderate to high potential for conversion to agriculture. *Swampbusting in Perspective*, p. 223. Given the vulnerability of these wetlands to conversion, and the high rate of farm program participation in these states, Swampbuster must play a significant role in reducing the rate of prairie wetland loss, and conserving the soil, water, and wildlife resources associated with them.

ARGUMENTS FOR EXEMPTING TEMPORARY WETLANDS ARE NOT PERSUASIVE

The foremost goal of Swampbuster opponents in North Dakota is the elimination of temporary wetlands from the Act. It is said that the statute should not cover small "wet spots" that are "nuisances." Moreover, farmers in North Dakota argue that it is "unacceptable" to eliminate eligibility for agricultural benefits if farmers drain those areas.

First, federal taxpayers all over the country are footing the bill for wetlands conversion in North Dakota. These taxpayers have spoken through their legislators to say

that the farm subsidy program should not be encouraging farmers to bring new land into production at the expense of wetlands.

Second, if these "wet spots" really are just nuisances, then the farmer can freely drain them without loss of benefits by not planting an agricultural commodity on them after they are converted. If the farmer's true intent is just to eliminate "nuisance wet spots," then he can do so without fear of loss of benefits. However, if these "nuisances" are drained and then farmed, the intent of drainage is to increase farmland and that is what Swampbuster was designed to discourage.

Third, if these wetlands are flooded only temporarily each year, the farmer can farm them without loss of benefits as long as he does not destroy their wetland characteristics. Even tilled Type 1 wetlands provide waterfowl values so long as they are not drained. In such areas Swampbuster allows the farmer to farm and the wetlands to stay wetlands so farmers and wildlife can both benefit. When these areas are drained, only the individual farmer benefits at the expense of flood control, groundwater recharge, and wildlife.

Fourth, if the areas are too wet to crop at any time without drainage then one has to wonder how it can be claimed that these areas are not wetlands.

The only thing Swampbuster prevents is the creation of more farmland at the expense of wetlands, which we are fast losing.

TEMPORARY WETLANDS ARE NOW INCLUDED IN SWAMPBUSTER

A review of the Swampbuster provisions of the FSA and the congressional record demonstrates that temporary wetlands are included in Swampbuster's definition of a wetland, and that they were intended to be included.

Swampbuster's Wetlands Definition Includes Type I Wetlands

Swampbuster defines a wetland as

land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

16 USC 3801(a)(16).

This is virtually the same definition of wetlands employed by the U.S. Army Corps of Engineers and the Environmental Protection Agency in administering Section 404 of the Clean Water Act.⁹ See 33 CFR 328.3(b)(1987) (Corps definition); 40 CFR 230.3(i)(1986) (EPA definition).

This definition, like the one used in Section 404, focuses on three components: water, hydric soils, and

⁹ Certain wetlands in Alaska are expressly excluded by Swampbuster but are not excluded from the Corps' and EPA's definitions of wetlands. 16 USC 3801(a)(16).

hydrophytic vegetation. See U.S. Army Corps of Engineers, Multiparameter Approach for the Identification and Delineation of Wetlands (1986). The presence of water is obviously the key component for wetlands delineation but it is unrealistic to assume that water must be present year-round to create a wetland. As the House Merchant Marine and Fisheries Committee Swampbuster Report notes: "The single feature that most wetlands share is soil or substrate that is at least periodically saturated with or covered by water." H.R. Rep. No. 99-271, Part 2, 99th Cong., 1st Sess. 16 (1985) [emphasis added]. (This report is significant because the House Committee's version of the wetland definition ultimately became part of Swampbuster.)

This point is also demonstrated by Swampbuster's definitions of "hydric soils" and "hydrophytic vegetation."

The Act defines "hydric soil" as

soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

16 USC 3801(a)(8).

"Hydrophytic vegetation" is defined by Swampbuster to mean

a plant growing in (A) water; or (B) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

16 USC 3801(a)(9).

According to these definitions, water needs to be present only for a duration sufficient to create "anaerobic conditions" or an oxygen deficiency during all or part of the

growing season. To constitute a wetland the soils must hold water long enough to deprive the plants of oxygen in the root zone during the growing season so that only plants that can tolerate such saturation, the "hydrophytic vegetation," can survive and out-compete species of vegetation that cannot do so. Congress' recognition of this phenomenon is reflected in the House Report: "The water creates severe physiological problems for all plants and animals except those that are adapted for life in water or saturated soil." H.R. Rep. No. 99-271, Part 2, 99th Cong., 1st Sess. 16 (1985); see 40 CFR 230.41(a)(3) (EPA regulation describing "wetlands vegetation").

Type 1 wetlands such as prairie potholes and bottomland hardwoods meet this definition because they are seasonally flooded or saturated during the growing season, although they may be dry during other parts of the year. By literal application of the terms of the statute, Type 1 wetlands are included in Swampbuster. Only by amending Swampbuster can these wetlands be exempted from the Act's protection.

Congress Intended To Include Type I Wetlands

The legislative history demonstrates that Congress fully intended that Type I wetlands be subject to Swampbuster sanctions. The House Merchant Marine and Fisheries Committee Report refers explicitly to "prairie potholes" and, indeed, uses FWS' experience with wetlands in the prairie pothole states as a model for the legislation. H.R. Rep. No. 99-271, Part 2, 99th Cong., 1st Sess. 16 (1985). Congress' recognition that seasonally flooded prairie potholes are wetlands is also reflected in

the express statutory language permitting cultivation of seasonally dry wetlands, when this operation is feasible, without the need for draining. 16 USC 3801(a)(1)(B).¹⁰ As explained by the House Report,

During the wetter years, these potholes will exhibit true wetland characteristics and will again provide valuable wetland functions and producers who convert these wetlands in such years shall be denied farm program benefits.

Id. at 16-17.

By definition Type 1 wetlands are seasonally flooded or saturated, and not permanently flooded or dry. Congress recognized the importance of protecting these, and all other wetlands, in their most valuable, that is, natural state: "[T]he purpose of the Act [is] to discourage destruction of wetlands as they naturally exist." Id. at 17 (emphasis added).

The law as it stands today includes Type 1 wetlands even though, to some, they may not appear to be wetlands at certain times of the year or during certain years. These wetlands cannot be excluded from Swampbuster without amending the Act, and should not be excluded because of their environmental importance. To exclude these wetlands through the expedient of nonenforcement violates the law as passed by Congress.

¹⁰ "Wetland shall not be considered converted wetland if production of an agricultural commodity on such land during a crop year--(i) is possible as a result of natural condition, such as drought; and (ii) is not assisted by an action of the producer that destroys natural wetland characteristics."

Swampbuster Does Not Exempt All Wetlands Cultivated
Prior to the Act

A second argument put forth to reduce Swampbuster's coverage is that Congress intended to exempt from Swampbuster all wetlands cultivated in any of the 1981-1985 crop years and, as a result, ASCS should determine that any wetland cultivated during those years is a "converted wetland" exempt from Swampbuster. Neither the statute nor the legislative history supports such a broad exemption.

The argument that Congress intended to supply the same broad exemption for wetlands as for highly erodible croplands fails when the language of the Swampbuster and Sodbuster provisions is compared. Section 1211 of the FSA, 16 USC 3811, makes a person ineligible for benefits due to production of an agricultural commodity "on a field on which highly erodible land is predominate." Section 1212(a)(1)(A) of the FSA, which sets forth the exemptions from Sodbuster, provides that no person shall become ineligible for benefits for planting a crop on any highly erodible land:

that was - (A) cultivated to produce any of
the 1981 through 1985 crops of an agricultural
commodity....

In contrast, the Swampbuster ineligibility provision, Section 1221 only restricts crop production on "converted wetland", and Section 1222(a)(1) contains only a limited exemption for wetlands whose conversion was commenced prior to the Act. Thus, the Act contains no broad cropping exemption for

Swampbuster, express or implied. Congress certainly demonstrated in Sodbuster the necessity for express language when it wanted to achieve an exemption for previously cropped lands.

Furthermore, a broad exemption for cropped wetlands would not, as some suggest, "equalize" the Sodbuster and Swampbuster provisions. In fact, an exemption for all wetlands cropped between 1981 and 1985 would make Swampbuster substantially more liberal. Land exempted from Sodbuster due to cropping history still becomes subject to a conservation plan by 1990 under the conservation compliance provision of the Act. 16 USC 3812(a)(2). Since there is no comparable allowance for a wetlands conservation plan, an exemption for all cropped wetlands would be a much broader exemption than that provided under Sodbuster. Farm Bill drafters must have recognized this connection between the cropping exemption and the conservation plan, since the House Farm Bill, H.R. 2100, included both a broad exemption for cropped wetlands and a requirement for a wetland conservation plan, and the Conference Committee deleted both of these provisions from the farm bill that ultimately became the law. See, Conf. Rep. No. 441, 99th Cong., 1st Sess. 458-460 (1985).

The statute and the legislative history also make it crystal clear that planting a crop does not, in and of itself, convert a wetland. As discussed previously, a wetland is covered by Swampbuster if, in addition to hydric soil and water conditions, it supports hydrophytic vegetation under "normal circumstances." 16 USC 3801(a)(16). The House

Merchant Marine and Fisheries Committee Report¹¹ clearly provides that the removal of hydrophytic vegetation through cropping will not disqualify an area as a wetland if it otherwise meets the definition:

Within the definition of the term wetlands, the term "normal" is intended by the Committee to make clear that areas that are saturated by surface or groundwater but have had wetland vegetation destroyed are nonetheless considered wetlands for the purposes of this Act.

H.R. Rep. No. 99-271, Part 2, 99th Cong., 1st Sess. 16 (1985).

Recognition that cropping history alone does not convert a wetland is also evident from the express exemption for "wetland on which production of an agricultural commodity is possible as a result of a natural condition, such as drought...." 16 USC 3822(a)(4). As the House Merchant Marine and Fisheries Committee Report explains, this exemption was included to cover

certain areas of the prairie pothole region where production of an agricultural commodity in such potholes is feasible and practicable during certain dry years without altering the wetland characteristics. During the wetter years, these potholes will exhibit true wetland characteristics and will again provide valuable wetland functions and producers who convert these wetlands in such years shall be denied farm program benefits.

¹¹As stated previously in the discussion of Type I Wetlands, the House Report is particularly significant since it is the House Committee's version of the wetland definition which ultimately became part of Swampbuster.

Id. at 17. See, also, S. Rep. No. 99-145, 99th Cong., 1st Sess. 304 (1985); H.R. Rep. No. 99-271, Part 1, 99th Cong., 1st Sess. 88 (1985).

The House Merchant Marine and Fisheries Committee Report further provides that the exemptions are to be read narrowly, and specifically, that the provision allowing production of agricultural commodities in wetlands during drought does not apply "if diking, filling, drainage, or other artificial means is necessary to continue or initiate agricultural production for the particular area." Id. H.R. Rep. No. 99-271, Part 2, at 17. Congress clearly intended to permit cropping of wetlands where such cropping was made feasible by dry conditions, but not to permit cropping of these wetlands in wet years where such cropping could only occur with the help of drainage activity. Congress expressly provided for a much narrower exemption for previously cropped areas (that are wetlands) than that provided in Sodbuster.

The narrow "natural condition" exemption would be illogical and duplicative if Congress actually intended to grant a blanket exemption for all wetlands cropped between 1981 and 1985, since any wetland cropped in any of those years under natural conditions would then receive a blanket exemption for drainage and crop production thereafter. Such a result is totally inconsistent with the express statutory language, the legislative history, and plain common sense.

In addition, the statutory definition of "converted wetland" confirms that Swampbuster does not exempt wetlands based on cropping history alone. This definition spells out the conditions under which the exemption for converted wetland applies. The law requires that to be considered "converted," a wetland must have been:

- (1) drained or otherwise manipulated prior to the Act;
- (2) in order to make crop production possible;
- (3) where such production would not otherwise have been possible.

16 USC 3801(a)(4)(A).

This definition expressly excludes wetlands on which a crop can be produced as a result of a natural condition. 16 USC 3801(a)(4)(B). Consequently, Congress could not possibly have intended to exempt all wetlands with a cropping history regardless of whether crop production was made possible by natural conditions alone or through wetland conversion activity.

The chronology of the legislative history also supports the conclusion that Congress did not intend to exempt all wetlands cropped between 1981 and 1985. The House Bill, H.R. 2100, did include an express exemption for any land cultivated between 1981 and 1985, apparently including wetlands. It also included the narrow "natural condition" exemption which, as explained above, was inconsistent with the broad exemption for cropped wetlands. The Senate Bill, S. 1714, did not contain the same broad exemption for cropped wetlands as it contained for highly erodible croplands. The Conference Committee consciously approved the House and Senate exemption for land cultivated between 1981 and 1985 for Sodbuster, but specifically deleted that cropping exemption for Swampbuster. Conference Rep. No. 99-441, 99th Cong., 1st Sess. 458, 460.

In addition, the Conference Committee chose the Senate bill's format, which provided separate and distinct sets of exemptions for Sodbuster and Swampbuster, over the House version's format, which lumped the two provisions together. Separating the two provisions was a wise decision which recognized the different ecological considerations involved in each.

This sequence of events confirms that Congress considered a broad exemption from Swampbuster for cropped wetlands and rejected that option in favor of carefully defined exemptions for "converted wetlands" and wetlands farmed under natural conditions.

Congressman Daschle, who sponsored the Swampbuster amendment to H.R. 2100, discussed the bill reported by the Conference Committee on the House floor on October 8, 1985. He specifically described a broad Sodbuster exemption for lands put into production between 1981 and 1985, but was noticeably silent with regard to such an exemption for Swampbuster. Cong. Rec. H 8482 (daily ed. October 8, 1985). Instead, in the very next breath, Congressman Daschle explained that he offered Swampbuster to reduce the rapid rate of wetlands conversion to agriculture, that the law was intended to eliminate subsidies for wetland drainage, and that such "bold steps" were necessary. These comments seem consistent with the action taken by the Conference Committee, and inconsistent with an intent to broadly exempt all wetlands cultivated between 1981 and 1985.

The statute and the legislative history do not provide an exemption for wetlands based on cropping history alone.

Members of Congress cannot now "revise" their intent and assert that the law does not mean what it says. If Congress wants to exempt all wetlands cropped between 1981 and 1985, it will have to amend Swampbuster to provide such an exemption.

When USDA promulgated Final Regulations implementing Swampbuster in late 1987, under the signature of Acting Secretary Peter C. Myers, the agency reached this same conclusion. In the preamble to the regulations, the agency clearly provides that:

crop history alone will not be used in the final rule as an indicator of wetland conversion. Wetlands that are farmed 3 out of 5 years prior to December 23, 1985 will not be considered to have been converted on that basis alone. This does not preclude such wetlands from being farmed in the same manner as they have been in the past. This does restrict what can be done in terms of drainage improvement on these wetlands, unless they are determined, on the basis of other factors, to have been converted before December 23, 1985. Crop history may be used in converted wetland determinations to analyze the extent of conversion and the purposes for which conversion was undertaken.

52 Fed. Reg. 35200, (September 17, 1985).

In summary, the statute, the legislative history, and the USDA regulations all repudiate any broad exemption for wetlands cultivated prior to the Act.

As the law now stands, a farmer can farm his wetland if natural conditions permit farming without additional drainage. Further, if a farmer made crop production possible

through drainage activity that preceded the Act, the wetland was converted and is exempt from Swampbuster. Arguments for a broad exemption for cropped wetlands are apparently intended to permit the farmer who never actually converted his wetlands prior to the Act, but instead farmed it only in dry years, to now drain the wetland and farm it every year. Such a practice clearly expands agricultural production and destroys valuable wetland resources--exactly the results Swampbuster was designed to prevent.

TEMPORARY WETLANDS SHOULD BE INCLUDED IN SWAMPBUSTER

Swampbuster Should Not Exempt Cropped Wetlands

Congress was wise to restrict the exemption for prior converted wetlands. A broad exemption for all cropped wetlands would result in at least as much new wetland drainage as an exemption for all Type 1 wetlands. FWS estimates that 20 to 30% of the remaining prairie wetlands in North Dakota, some 200,000 to 300,000 acres, would be exempted from Swampbuster if cropping history could be used to exempt a wetland as a converted wetland (Exhibit C). The FWS further estimates that eliminating Type I wetlands would exclude one-third of the wetlands in an eight state region including Indiana, Minnesota and Wisconsin (Exhibit A).

Furthermore, change in the statute or the regulations at this stage in Swampbuster implementation would result in increased drainage. First, a change that broadens an exemption from Swampbuster sends yet another signal to farmers in the prairie pothole states that neither Congress

nor USDA is really serious about Swampbuster implementation. Second, any wetlands newly exempted from Swampbuster are likely to be drained immediately to ensure that their drainage will not be restricted in the future (See Exhibit C).

20-30 Percent of Prairie Pothole Wetlands are at Stake

In addition to the fact that Type 1 wetlands comprise an estimated 18 percent of the remaining wetlands in the Dakotas and Minnesota, numerous Type III and some Type IV wetlands would probably be drained, as well, because of some history of cropping during dry years (Exhibit C). Finally, FWS personnel caution that any wetlands deleted from the Swampbuster definition "will be drained immediately." Id.

Having already lost over 50 percent of the wetland acreage originally existing in the prairie pothole region, additional loss of wetlands, including temporary wetlands, cannot occur without significant adverse effects on wildlife and water resources.

Denial of Benefits under Swampbuster Should Not Be Relaxed

Farmers have argued that the Swampbuster ineligibility provision is too severe and that "inadvertent" wetlands destruction should not result in loss of all benefits. Their argument that "the penalty should fit the crime" is

fundamentally misplaced, since Swampbuster does not impose a penalty for a crime, but withholds federal subsidy payments where federal wetlands conservation policy is ignored. Relaxing the Swampbuster ineligibility provision would be a serious mistake at this time, for several reasons. First, it is hard to conceive of an instance in which farmers -- particularly in North Dakota, where Swampbuster has been in the press daily -- could violate Swampbuster "inadvertently." Any time a farmer moves water off his land he ought to be thinking "Swampbuster." He has two opportunities to avoid a violation: (1) when he drains, and (2) when he plants. If he seeks a determination from ASCS and SCS anytime before he takes both these actions, he can avoid any loss of benefits.¹² If a farmer elects to drain and plant based on his own compliance determination, without the assistance of the ASCS and the SCS, he does so at his own risk. Such a violation is no more "inadvertent" than the taxpayer who elects to interpret the tax code in his favor and is penalized for non-payment of taxes.

Second, if a farmer can demonstrate a good faith effort to get an agency determination and to comply with Swampbuster, the formal USDA appeal process provides a remedy that should avoid any unfair result. SCS sources report that the appeal process has worked well in many parts of the

¹² Continued mapping such as in the Red River Valley of North Dakota and individual wetlands determinations such as those performed in Minnesota should further remove the likelihood of truly "inadvertent" wetlands destruction.

country. In the past, the appeal process has hardly been tested in North Dakota due to lax implementation.

Third, the dismal implementation record in the prairie pothole states demonstrates that any further complication of the compliance determination the ASCS must make is likely to make the present administrative problems even worse. Even where the evidentiary requirements for an exemption are clear-cut, as is the case with the "commenced" exemption discussed earlier, ASCS county committees have ignored the requirements in order to exempt a farmer from Swampbuster. See discussion at pages 12-14 above. If ASCS county committees are also asked to prove intent to violate Swampbuster, it is likely that no producer in the prairie pothole states will ever be found in violation.

Similarly, county committee practices to date suggest that any change from the current total ineligibility for annual payments to a graduated and discretionary scheme of withholding benefits will simply be too complex and variable to be properly implemented by ASCS county committees.

Finally, relaxing Swampbuster ineligibility conditions will seriously undermine the deterrent effect of loss of benefits. Farmers could then drain wetlands virtually without risk because, if they are caught, they could claim the wetland drainage was inadvertent. Penalties that only exact a modest fee and require restoration will simply become a cost of doing business with little risk for the farmer unlucky enough to actually be caught in violation.

The provisions of Swampbuster and Sodbuster which deny farm program benefits received considerable attention when the FSA was passed in 1985. The drafters felt a strict provision was required for Swampbuster in order to provide a real deterrent to wetland drainage, and in recognition of the high social costs of drainage and the expense and time required for restoration -- if restoration is even possible .

Swampbuster protects the farmer from unfairness at virtually every turn. The only way the law will work is with an ineligibility provision that makes farmers ask questions before they drain and plant an agricultural commodity.

Other Wetlands at Stake

The prairie potholes are not the only place where millions of acres of wetlands are at risk if Congress turns its back on Swampbuster. The remaining wetlands most vulnerable to agricultural conversion are palustrine (upland, generally fresh water) wetlands in private ownership. According to the 1982 Natural Resources Inventory (NRI) conducted by SCS, approximately 80% of wetlands not federally protected are privately owned. Heimlich & Langner, "Swampbusting in Perspective," 41 Journ. of Soil & Water Conservation (No. 4) 219 (1986) ("Swampbusting in Perspective"). Of the 70.7 million acres of non-federal palustrine wetlands, the 1982 NRI rated 5.1 million acres as having a moderate to high potential for conversion to cropland in 1982. About 85 percent of these high potential wetland conversions could be easily brought into production. Id.

Approximately 16 million acres of wetlands remaining in 1982 would have earned short-term positive returns if converted, assuming 1985 crop prices and subsidy program participation rates. Heimlich & Langner, "Swampbusting: Wetland Conversion and Farm Programs," USDA Ag. Econ. Rep. No. 551 (1986); Swampbusting in Perspective, pp. 220-221. Therefore, the 5.1 million acre estimate of wetlands vulnerable to agricultural conversion actually may represent the low end of the range.

In 1984 FWS identified nine types of wetlands in the United States "that are in greatest jeopardy from a national standpoint." *Wetlands Status and Trends*, pp. 35-36. According to a USDA economic study, agricultural conversion is a major threat to six of these nine types, including the palustrine wetlands of South Florida, the Nebraska Sandhills and Rainwater Basin, the pocosins of the North Carolina coastal plain, and western riparian wetlands, as well as the prairie potholes and the Lower Mississippi River bottomlands. *Swampbusting in Perspective*, pp. 223-224.

South Florida's palustrine wetlands provide freshwater run-off which maintains the salinity balance in coastal estuaries supporting 85 percent of Florida's off-shore fishery. *Wetlands Status and Trends*, pp. 40-41. These wetlands also provide breeding and wintering habitat for many bird species, and support a number of endangered species. Id. Agricultural conversion and projects to protect agricultural land from floods have been major factors in past wetland conversion. Id. Approximately 382,500 wetland acres, about 8.5 percent of the 4.5 million acres of non-federal wetlands in this area, were rated in the 1982 NRI as having a moderate to high potential for conversion. *Swampbusting in Perspective*, p. 223.

Nebraska's Sandhills and Rainwater Basin areas are migration stopovers critical for waterfowl and sandhill cranes in the Central Flyway. *Wetlands Status and Trends*, pp. 46-48. Agricultural conversion and irrigation-related wetland losses have concentrated migratory birds in remaining wetlands, resulting in increased disease. *Id.* About 128,850 wetland acres are estimated to have a moderate to high potential for conversion in this area. *Swampbusting in Perspective*, p. 223.

The North Carolina pocosin wetlands are principal groundwater recharge areas, and, like the South Florida wetlands, provide fresh water run-off essential to maintaining the salinity balance of the coastal estuaries. These wetlands also provide important wildlife habitat. *Wetlands Status and Trends*, pp. 49-50. The SCS has estimated that about 380,000 acres of pocosin wetlands in North Carolina have a moderate to high potential for agricultural conversion. However, conversion may be profitable on a much larger acreage due to economies of scale in large-scale wetland conversions. *Swampbusting in Perspective*, pp. 223.

The western riparian wetlands provide important food and cover for resident and migratory species of fish and wildlife in what are otherwise arid regions. *Wetlands Status and Trends*, pp. 50-51. These areas have been reduced significantly, in part due to agricultural conversion. *Id.* About 35,000 wetland acres in this area have a moderate to high conversion potential. *Swampbusting in Perspective*, pp. 223-224.

We are extremely concerned that any signs of weakness in Swampbuster enforcement in the prairie states will stimulate agricultural conversion in these other important wetland

areas. If Swampbuster is rendered a dead letter in the prairie states there is little reason to believe that it will be any easier to enforce in any other states. This will be especially true if Congress shows a lack of resolve to support existing legislation.

SWAMPBUSTER BENEFITS THE AMERICAN FARMER

Effective enforcement of Swampbuster actually creates a net benefit for farming. Drainage of wetlands may seem like a short term gain for an individual farmer, but this ignores the fact that such drainage merely externalizes the loss of wetlands values, such as flood control, to the entire agricultural community. In times of economic hardship this sort of individual, short term decision-making may be exacerbated by financial pressure to maximize individual yield. Our painful awareness of the long-term overall economic costs of this individual decision-making led to the creation of much of the existing farm subsidy program. Farmers must be stimulated to make decisions (for example to reduce production) that might reduce individual profits but in the aggregate are necessary to preserve the farm economy (by keeping a floor under commodity prices). Similarly, farmers must be discouraged from draining wetlands, a decision that may yield an individual, short-term profit, but that may collectively spell disaster for the entire farming community.

Compensation Is Appropriate for Farmers Who Protect
and Restore Wetlands

Farmers in the prairie pothole states believe that they should be compensated for maintaining or restoring wetlands on their property. We recognize the potential environmental benefits of such compensation and support existing and proposed conservation programs.

Existing compensation programs include the Water Bank program, of which North Dakota landowners have been the primary beneficiaries; the FWS waterfowl production area easement purchase program; the FmHA debt restructure easement provision in the Act, 16 USC 3918; state easement programs, such as the "Reinvest in Minnesota" (RIM) program; and state tax credit programs. Some or all of these programs could be expanded to provide additional compensation to farmers conserving wetlands.

S. 2143: Expansion of CRP to Include Wetlands

We also support legislation like S. 2143, which would enable conservation reserve program (CRP) enrollment of certain wetlands with a history of crop production. This legislation provides an opportunity to reverse wetland loss nationally, and in many states to bring natural wetlands back from the brink of extinction. If attached to expanded CRP acreage authority, such as that proposed in S. 1521 and S. 2045, wetland eligibility need not dilute the erosion control objectives of the existing reserve program.

Nevertheless, any wetland reserve must be framed to provide the greatest and most enduring conservation benefits

for each public dollar invested. To this end, four interrelated conditions would conform S. 2143 to the FSA's CRP authority, certain other government conservation programs, and tenets of sound policy.

First, Congress should not enact S. 2143 in tandem with any weakening of Swampbuster. It would be indefensible to spend substantial federal funds toward "renting" wetland protection, only to subsidize a new round of agricultural conversion after CRP contracts expire. This could happen, for example, if Congress simultaneously opened the reserve program to, and created a blanket Swampbuster exemption for, wetlands that were previously cropped but never converted.

Moreover, if S. 2143 becomes law, Swampbuster coverage must be expanded to include ecologically important uplands enrolled in the reserve in association with wetland areas. This is critical given that as much as two-thirds of individual fields enrolled under S. 2143 may be unaffected by the FSA's existing sodbuster, conservation compliance or Swampbuster provisions.

Second, the bill should articulate a preference for restoring converted wetlands. This approach has proved successful within the landmark Reinvest in Minnesota (RIM) program, which limits wetland eligibility to areas that have already been lost to agriculture. This would also be consistent with a leading purpose of the CRP, which is to repair damages that have arisen in part from misplaced policy incentives for cropland expansion.

In this regard, S. 2143 should mandate that natural characteristics be restored on any converted wetland enrolled in the CRP; as with the existing program for erosion control, ample provision could be made for USDA to share in the cost of the physical restoration. As drafted, the bill imposes no such requirement. The CRP conservation plan specifications in 16 USC 3832 are not sufficient; they relate to highly erodible land reclamation and are generally inappropriate for wetland restoration.

Third, S. 2143 should contain an option for easement restrictions proscribing agricultural wetland conversion in perpetuity. This, too, would follow the RIM model, as that state program mandates permanent easements for compensated wetland restoration. Applicable precedent also exists in programs of the U.S. Fish and Wildlife Service that have placed more than one million acres of wetlands under conservation easement.¹³

The permanent easement option recognizes the difficulty of undertaking any agricultural practices, even those less intensive than annual row crop production, without sacrificing natural wetland values. The situation is different for the highly erodible land being enrolled in the CRP, much of which can, with appropriate conservation precautions, be committed to alternative economic pursuits after the CRP expires. For example, ten years of rental payments will likely facilitate an enduring transition to

¹³Barrett and Livermore, The Conservation Easement in California 4 (1983).

sustainable livestock grazing or tree farming on many fields now enrolled in the reserve.

Fourth, for the sake of fairness and fiscal responsibility, compensation for wetland CRP contracts must be commensurate with locally prevailing land values and rental rates.¹⁴ This will prevent any serious disjunction between the conservation reserve and the RIM program or other state efforts that may imitate the Minnesota example. Perhaps most important, CRP compensation under ten-year contracts must never "out-compete" RIM or other government programs that pay for permanent wetland conservation.

Swampbuster and Private Property

Finally, we wish to emphasize what Swampbuster does not do. It does not prevent farmers from destroying wetlands on their property to increase the amount of land in production. Moreover Swampbuster results in ineligibility for benefits only if a farmer drains a wetland and produces an "agricultural commodity" in the converted wetland. 16 USC 3821.¹⁵ Thus a farmer may safely drain a wetland for any

¹⁴This may be partially alleviated by the requirement approved in the omnibus spending bill for FY 89 that bid ceilings for CRP rental payments not exceed prevailing local cropland rental rates.

¹⁵ The Act defines "agricultural commodity" as "any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters" 16 USC 3801(a) (1) (A).

purpose other than production of agricultural commodities without loss of benefits.

Swampbuster is not a statute where the federal government is telling landowners what they can and cannot do with their private property. Instead, Congress has said to farmers, "You can drain your wetlands if you want, but don't expect the federal taxpayer to pay for it." Of course, we realize that, in many cases, removal of all agricultural subsidies will be a powerful disincentive. But, this disincentive is clearly necessary to allow Congress to ensure that the expenditure of federal tax dollars is consistent with federal policies.

As a result, the farm economy crisis and the sanctity of private property are superficially appealing, but ultimately false issues in the context of Swampbuster.

Allowing Swampbuster's provisions to continue to be ignored represents a shortsighted disregard for the realities of Nature--a Nature that can bring drought and devastating floods as well as abundant, diverse wildlife. Congress must recognize that wetlands can play a major role in banking the dividends of good years and tempering the adversity of bad years brought by the unpredictable forces of Nature.

Effective application of Swampbuster does not mean economic disaster for the American family farm. We reject the notion that a viable farm economy is incompatible with preserving wetlands. Over the years we have worked closely with farmers and farm organizations to show that farms can be economically productive without removing valuable wildlife

habitat. In addition, the critically important services performed by wetlands, including flood control and groundwater recharge, demonstrates that wetlands benefit farmers and all of our society, as well as wildlife.

EXHIBIT A



IN REPLY REFER TO

United States Department of the Interior

FISH AND WILDLIFE SERVICE
FEDERAL BUILDING, FORT SNELLING
TWIN CITIES, MINNESOTA 55411



FWS/ARW-WSS

MAR 8 1988

Memorandum

To: Director (EHC/BSP)

From: ^{Acting} Regional Director, Region 3Subject: Fish and Wildlife Service Responsibility in
Swampbuster Implementation

Swampbuster, however conceived and legislated in Washington, has had minimal success in Region 3 in preserving wetlands on private lands involved in Department of Agriculture commodity programs. Service field personnel will tell you these wetlands are disappearing at an alarming rate.

The following is in response to the questions posed in your memorandum of February 23, 1988:

1. The Soil Conservation Service and the Agricultural Stabilization and Conservation Service have transformed wetlands into non-wetlands through lax interpretations of the regulations, thereby making "consultation" moot. Consultation only occurs when Soil Conservation Service and Agricultural Stabilization and Conservation Service interpretations leave an issue unresolved by their standards. In most cases the Service is not consulted.

Example: In Minnesota 70 percent of the prairie potholes or seasonally flooded or ponded areas (all meeting technical wetland definitions) are interpreted to be non-wetlands.

Potholes - Past history of drainage leaves the wetland a non-wetland.

Seasonally flooded or ponded areas - Past history of woody vegetation removal in the 1970's makes large expanses of wetland parks in the northern tier of counties non-wetlands.

Consequently, the Service is not consulted.

2.

2. Drainage was at an all time high last year in Minnesota and other states with remaining wetlands. The general consensus in the Service and Soil Conservation Service is that Swampbuster stimulated drainage rather than slowing it. The Soil Conservation Service state office tells us 30,000 drainage cases occurred in Minnesota in 1987, of which 15,000 went unreported on the AD-1026 form. They estimate 3,000 of these are Swampbuster violations but admit they are not being investigated.
3. To date several hundred potential violations have been observed and reported by Service personnel in Region 3, most in Minnesota where more wetlands remain. However, the Agricultural Stabilization and Conservation Service does not generally concur with the Service's view as to what constitutes a violation.

Example: Recently our Swampbuster Coordinator in the Morris Wetland Management District in western Minnesota reported he had consulted on eleven "commenced" determinations with Agricultural Stabilization and Conservation Service. Using Agricultural Stabilization and Conservation Service interpretations, he agreed six cases had commenced. However, the remaining five cases were contested. The county committee's response was that the Service's interpretation was incorrect in four of the five cases. The result, ten of eleven wetlands were non-wetlands.

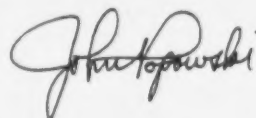
4. The impact of exempting Type 1 wetlands from Swampbuster protection would be to formally rescind protection for an estimated one-third of the wetlands that, in theory, are protected at this time. Lost wetland values include the critically important spring pairing habitat for ducks.
5. If a categorical minimal effect exemption were approved by interagency agreement for wetlands of less than one-quarter acre, the result would be a tremendous decrease in the number of wetlands smaller than this threshold size. In the midwest, many of the Type 1 potholes are this size. These are the critical wetlands needed for duck pairing activity in the early spring.

Our recommendation is to protect the prairie pothole, plays, and seasonally flooded and ponded wetland values that existed as of December 23, 1985. We believe the Final Rule clearly gives these wetland values special protections. Interpretations other than this appear to be aimed at circumventing the original intent of the legislation - wetland preservation.

We are strong and enthusiastic supporters of the Farm Bill. We have excellent interagency cooperation with the Soil Conservation Service and Agricultural Stabilization and Conservation Service on wetland restoration activities. Their cooperation on Farmers Home Administration lands is also

3.

excellent. Unfortunately, Swampbuster interpretations have hamstrung field personnel. Even Soil Conservation Service and Agricultural Stabilization and Conservation Service field personnel are telling us the interpretations, not the regulations, are making their lives miserable.



cc: National Farm Bill Coordinator
Assistant Regional Directors (ARW), (AE), Region 3
Regional Farm Bill Coordinator, Region 3



United States Department of the Interior

FISH AND WILDLIFE SERVICE

WILDLIFE SERVICE C. 20240

ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICEIn Reply Refer To:
FWS/EHC/BSP

FEB 23 1988

Memorandum

To: Regional Directors, Regions 1, 2, 3, 4, 5, 6 and 7

From: Director

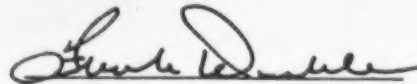
Subject: Fish and Wildlife Service Responsibility in Swampbuster Implementation

The Fish and Wildlife Service (Service) by virtue of the Food Security Act of 1985 and subsequent Department of Agriculture regulations, has both the opportunity and the responsibility to participate, to the fullest extent possible, in Swampbuster implementation activities. It is important that the Service offer the greatest possible technical support to agencies of the Department of Agriculture as they proceed with field implementation efforts.

Serious questions regarding the effectiveness of Swampbuster implementation efforts continue to surface. For the Service to be in the best possible position to respond to any questions ultimately directed to it, data based on field implementation experience will be required. Each Region should assemble pertinent information and be prepared to provide such on short notice. The type of information may vary somewhat from Region to Region but basically I will need to know the following:

1. What consultation opportunities are actually available to Service field personnel? Is Service participation making a difference? How should it be improved?
2. Is wetland conversion for agricultural purposes a continuing problem? To what extent has Swampbuster affected the conversion of wetlands?
3. How many potential violations have been observed and reported by Service personnel? What has been the response of the Agricultural Stabilization and Conservation Service to these reported activities? Is the response adequate? Attached is a form being utilized by Region 3 to report observed wetland modifications. Each Region should utilize this or something similar.

4. What would be the impact of an exemption from Swampbuster protection of Type 1 Wetland, both in terms of acres and lost wetland values?
5. If a minimal effect determination were routinely granted to conversions affecting wetland of less than one-quarter acre, what would be the impact, both in terms of acres and wetland values.



Attachment

WETLAND IMPACTS REPORT

To: Agricultural Stabilization and Conservation Service, County Executive
 Director _____ County, _____ State.
 Date of Report: _____

Draining, dredging, filling, leveling (or other manipulation) was observed in progress, or has recently been completed, at the location described below. This activity was noted by the observer while conducting routine work assignments. The landowner or person responsible for the activity could lose USDA program benefits if a converted wetland is planted to an agricultural commodity. This report is provided for your information to further the wetland conservation provisions of the Food Security Act of 1985.

Please place this document in the landowner's file for future reference.

Owner/Operator where wetland activity observed _____.

Location of conversion: County: _____ Twp. _____ Range: _____ Section _____.

Wetland Characteristics (type, vegetation, size) _____

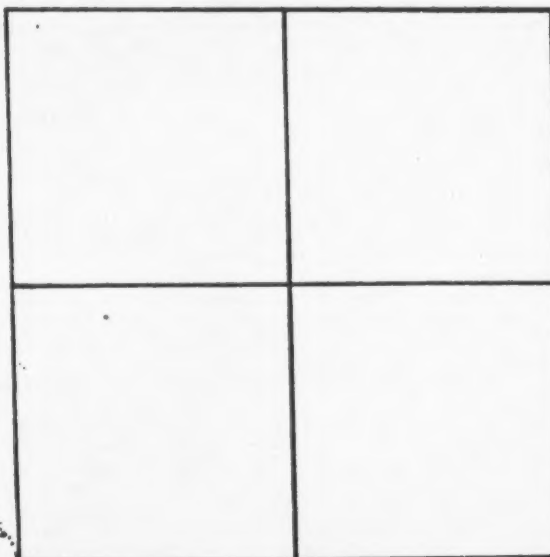
Activity Observed _____

Photos: Yes _____ No _____

Location Map:

Scale:

4 inches =
1 mile



Date of Observation: _____ Observer: _____

Observer Address: _____

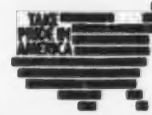
cc: U.S. Fish & Wildlife Service Agriculture Program Coordinator for
 _____ (State).

EXHIBIT B



United States Department of the Interior

FISH AND WILDLIFE SERVICE
FEDERAL BUILDING, FORT SNELLING
TWIN CITIES, MINNESOTA 55111



IN REPLY REFER TO:
FWS/ARW-WSS

JAN 14 1988

Dr. Keith W. Harmon
Western Field Representative
Wildlife Management Institute
421 Pioneer Court
Hickman, Nebraska 68372

Dear Keith:

Your letter of December 18, 1987 reaches the conclusion that U. S. Department of Agriculture is accommodating drainage and not policing the Swampbuster Program. You also stated there was increased drainage activity in the fall of 1987 due to lack of fear by landowners of enforcement by U. S. Department of Agriculture.

I know from the reports of regional staff that Swampbuster implementation may not be in a manner that is fully consistent with the purposes, intent, and letter of either the Food Security Act or the step-down regulations. However, I should add that many individuals in the Soil Conservation Service and some in the Agricultural Stabilization and Conservation Service are attempting to implement the law and regulations faithfully. In recognition of this we are fully committed to developing working relationships with both of these agencies.

Service field personnel have noted a greatly increased level of drainage activity in the summer and fall of 1987. In Minnesota we have been advised by the Soil Conservation Service that approximately 15,000 wetland determinations were requested by landowners through the AD-1026 form. The disturbing thing is they estimate another 15,000 landowners should have requested the wetland determination and did not. They estimate further that approximately 20 percent, or 3,000 landowners, are now out of compliance with Swampbuster provisions. Despite this, the Agricultural Stabilization and Conservation Service has advised us that only one landowner in the United States has lost his program benefits due to non-compliance with Swampbuster provisions. That landowner is in Todd County, Minnesota.

Our experience, in our consultation role with U. S. Department of Agriculture agencies, has been continual hair-splitting that accommodates more drainage. Whether the issue is maintenance in prairie potholes or determination of commenced drainage, the result seems to be more drainage. We want to see the Agricultural Stabilization and Conservation Service and the Soil Conservation Service fully implement their new, more regulatory, role under this law so that on-the-ground benefits to wetlands will result.

Mr. Keith W. Harmon

2.

Our concerns over this issue are expressed in the ~~enclosed~~ memorandum to the Director. We would like to see this issue elevated to the investigation level so that corrective measures are implemented through the appropriate oversight channels. We feel this would most effectively assure thorough resolution of the problem. The Service role would then be to provide information and assistance for the investigation, while still encouraging cooperation among agencies at the field level.

Your letter focuses on a key point, enforcement, and discusses the Service role in it. The Service fully accepts the consultation roles provided for in the Swampbuster provisions but as you know enforcement is the responsibility of the Agricultural Stabilization and Conservation Service. Of course the Service has a vital interest in the quality of enforcement so we have directed field personnel to observe potential violations while conducting routine business and to report them to County offices of the Agricultural Stabilization and Conservation Service. We have requested that Agricultural Stabilization and Conservation Service and Soil Conservation Service investigate potential violations and provide the Service the results of these investigations. Enclosed for your reference is the Wetland Impacts Report we are distributing to our field stations to monitor Swampbuster problems this year.

We accept your suggestion that the Service commit more resources to identification of potential violations. Also, we intend to do a better job of researching and follow-up of observed drainage activity in the field and with Soil Conservation Service and Agricultural Stabilization and Conservation Service offices. We will do our best to document specific Swampbuster problems on specific properties in each state of Region 3. We feel that following up our observations of potential violations, which we have noted in the course of conducting normal field activities, is consistent with provisions of the Swampbuster law and does not constitute a policing role. We would be happy to provide this information to the Wildlife Management Institute or other conservation organizations upon request.

Finally, I am pleased that the Wildlife Management Institute is tracking the implementation of Swampbuster. We welcome your interest and your suggestions. We recognize our common interest in wetland protection.

Sincerely,

/s/ James C. Gritman

Regional Director

Enclosures

Editor's Note: The memorandum to the Director was not submitted to be a part of the hearing record. See Exhibit A for the Wetland Impacts Report.

Dr. Keith W. Harmon

3.

cc: Galen Buterbaugh, Regional Director, Region 6, USFWS
Regional Farm Bill Coordinator, Region 3, USFWS
State Coordinators, Region 3, USFWS
Jack Berryman, International Association of Fish and Wildlife Agencies
Larry Jahn, Wildlife Management Institute
Skip Baron, National Wildlife Federation
✓Jan Goldman-Carter, National Wildlife Federation

EXHIBIT C



United States Department of the Interior

FISH AND WILDLIFE SERVICE
1500 CAPITOL AVENUE
BISMARCK, NORTH DAKOTA 58501



MEMORANDUM

MAR -9 1988

RECEIVED

MAR 14 1988

To: Farm Bill Coordinator, Region 6
Denver, CO MAIL STOP 60130

From: Supervisor, ND Wetland Habitat Office
Bismarck, North Dakota

NWF WILDLIFE TEAM

Subject: Comments on Director's Memo of 2-23-88 - Requesting Information on
Swampbuster

1. What consultation opportunities are actually available to Service field personnel? Is Service participation making a difference? How should it be improved?

Response

To this point, the Service has provided continuous consultation with SCS on wetland determinations. The guidelines, and training in which the Service was involved provided a better understanding of wetland identification and ultimately a better wetland determination product. We are continuing to consult with SCS on wetland determinations and there will be a need to continue to do so for the duration of the wetland determination process. We are also in the process of developing an MOU identifying the process by which a producer can get back into compliance by restoration through a minimal effect determination. Presently we are continuing to consult with SCS on all minimal effect determinations and will continue to do so in the future. We expect a need for additional MOU's dealing with other aspects of minimal effect determinations, such as with state enacted no-net-loss wetland legislation. We have a very positive and productive working relationship with SCS and, yes, it is making a difference in proper implementation of Swampbuster. The only area where our input could be improved is at the county SCS level where in certain counties there still exists a negative attitude towards Swampbuster and Service involvement.

The work with ASCS also has a positive aspect. We have consulted at the state and county level on commencement requests with the state office accepting our recommendation of a commencement filing form. Certain ASCS county committees welcome Service involvement at commencement hearings and we expect the involvement to continue. We are continuing to provide information on potential Swampbuster violations to county offices and in some cases this has resulted in wetlands restored. Overall Service involvement with ASCS has resulted in better Swampbuster implementation than would have occurred without us. There is, however, room for improvement. As with SCS, certain county ASCS offices have an attitude problem with Swampbuster and Service involvement and implementation will continue to be a problem there. Clearer direction to both ASCS and SCS county offices on their responsibility under Swampbuster and the Service's consulting role would help.

2. Is wetland conversion for agriculture purposes a continuing problem? To what extent has Swampbuster affected the conversion of wetlands?

Response

Wetland conversion is continuing in North Dakota for the following reasons: 1.) There has been limited effort to ensure compliance. The State Director of ASCS has taken an anti-compliance attitude and the State Congressional delegation continues to tell people that Swampbuster will be changed. 2.) Producers are realizing and are being coached by SCS and ASCS in certain instances how to get around the Swampbuster provisions. Producers are simply draining and not planting a crop or planting grass, and 3.) Swampbuster has created a landowner fear that sometime soon there may be legislation that will stop wetland drainage. Producers have publicly stated that they should complete drainage now before something happens that does restrict drainage. As Swampbuster presently stands now, without any compliance, the legislation has resulted in more wetlands drained in North Dakota than if Swampbuster had never been enacted. Hopefully, things will change and the long range analysis will reflect a plus for wetlands. Drainage rates in North Dakota in 1987 were reportedly the highest in 10 years.

3. How many potential violations have been observed and reported by Service personnel? What has been the response of the Agricultural Stabilization and Conservation Service to these reported activities? Is the response adequate? Attached is a form being utilized by Region 3 to report observed wetland modifications. Each Region should utilize this or something similar.

Response

In 1986 the Service reported 150 potential violations to county ASCS offices in North Dakota. Several hundred more were recorded but never provided to ASCS offices. 1987 figures are not yet tallied but approximately 50 have been reported with several hundred more recorded. ASCS response has been that it is not the responsibility of the Service to report potentials, they do not want the information and they have reacted by going to the press accusing the Service of being "Spies in the Sky". There have been several county ASCS offices, however, that expressed appreciation for the information and considered the Service information very helpful in resolving potential conflicts with producers. In most cases ASCS took no action on reported potentials and their response has not been adequate.

4. What would be the impact of an exemption from Swampbuster protection of Type I Wetland, both in terms of acres and lost wetland values?

Response

There is no way to administratively omit protection of Type I wetlands. The reference of cropping history would be inclusive of not only Type I but a

large portion of the Type III's and limited portion of Type IV due to cropping during dry periods. If cropping history were used, we estimate 20-30 percent of existing wetlands in North Dakota would have no protection encompassing approximately 200,000 to 300,000 acres. Another very important consideration is that any change made in the Swampbuster wetland definition will bring new direct drainage pressure on deleted wetlands resulting in an increased drainage rate over what previously or presently exists. If any wetlands presently considered to be covered by Swampbuster are deleted, they will be drained immediately.

Although we know of no administrative procedure to eliminate just Type I's, if it were possible there would be tremendous loss in wetland values. Biologically and hydrologically temporary wetlands are extremely valuable. For waterfowl importance, Type I's represent the backbone of waterfowl production locally and for migration provide critical habitat for all birds travelling further north. Considering the serious loss of wetland habitat that has already occurred, no additional loss of any type can occur without serious impacts.

5. If minimal effect determination were routinely granted to conversions affecting wetland of less than one-quarter acre, that would be the impact, both in terms of acres and wetland values.

Response

First, determining wetland size on such a dynamic ecosystem as prairie wetlands is virtually impossible. High runoff, low runoff and normal are ever changing and would be an administrative nightmare. Secondly, a significant amount of the most valuable and productive wetlands are less than one-quarter acre. The facts against such action are similar to those on the Type I issue. With less than one-half of the original wetland base remaining, any additional loss is increasingly significant. And again, omitting at this stage any previously included wetlands will bring new and direct drainage pressure on these omissions. We estimated 10-20 percent or 100,000 to 200,000 acres would lose protection and have new drainage pressure directed to them.

Hopefully these comments have provided background on Swampbuster in North Dakota. So far Swampbuster has probably resulted in more drainage than would have occurred without it. However, if compliance can be addressed, the loopholes closed such as exist with cropping required for a violation and no relaxing of the wetland definition occurs, the long range benefit to wetlands could be positive. Call if you have any questions on these comments.

cc: ND Refuge Supervisor



Legislation aims to narrow wetlands

BISMARCK (AP) — Legislation to make wetlands eligible for the Federal Conservation Reserve Program should help address farmers' complaints about restrictions on wetlands use, according to North Dakota's senators.

"This will not expand the size of the (program)," said Sen. Quentin Burdick, D-N.D. "We are simply expanding the pool of land that would be eligible."

The legislation makes fields cropped in any two of the crop years from 1981 through 1985 eligible for the reserve program, if one-third or more of the land in the field is considered wetland or converted wetland. The Agricultural Stabilization and Conservation Service recently completed a mapping of North Dakota's wetlands.

The wetlands-protection program, commonly known as "swampbuster," is meant to prevent farmers from draining or using wetlands to plant crops that are already in surplus. Violators could face losing their federal farm-program payments.

"This is an important first step in addressing some of the problems we're experiencing with swampbuster regulations," Sen. Kent Conrad, D-N.D., said of the regulations. The legislation was introduced by Conrad, Burdick and Sen. Rudy Boechwitz, R-Minn.

The Senate Agriculture Committee, of which Conrad is a member, said a hearing on swampbuster and the Conservation Reserve Program would be held March 24.

Both the reserve program and swampbuster were part of the com-



Burdick

prehensive package of farm legislation passed in 1985. The reserve program allows farmers to bid to take land out of production that is considered highly susceptible to erosion.

If the government accepts the bids, the land must not be planted for 10 years, with farmers receiving



Conrad

annual rental payments for holding up their part of the deal.

Farmers have complained that swampbuster in some cases has barred the tilling of land that has been farmed for years and that the possibility of losing one's government payments is too severe a penalty for inadvertent violations.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

JOHN MELCHER, MONTANA
 DAVID H. PRYOR, ARKANSAS
 DAVID L. BOREN, OKLAHOMA
 HOWELL HEFLUM, ALABAMA
 TOM HARKINS, IOWA
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RICHARD G. LUGAR, INDIANA
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 THAD COCHRAN, MISSISSIPPI
 RUDY BOSCHWITZ, MINNESOTA
 MITCH MCCONNELL, KENTUCKY
 CHRISTOPHER S. "KIT" BOND,
 MISSOURI
 PETE WILSON, CALIFORNIA
 DAVID R. KARNES, NEBRASKA

United States Senate

COMMITTEE ON
 AGRICULTURE, NUTRITION, AND FORESTRY
 WASHINGTON, DC 20510-6000

April 7, 1988

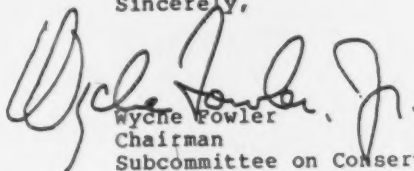
Mr. Wayne Baron
 National Wildlife Federation
 Director
 Prairie Wetlands Resource Center
 1412 Sixteenth St., N.W.
 Washington, D.C. 20036-2266

Dear Mr. Baron:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
 Chairman
 Subcommittee on Conservation and
 Forestry

Additional Questions for MR. WAYNE BARON, NATIONAL
WILDLIFE FEDERATION, submitted by Senator Conrad

1. You stated in your testimony that draining of wetlands in North Dakota and throughout the upper midwest continues unabated. You also stated that there exists open disdain for swampbuster implementation in the prairie pothole states. Do you have documented evidence other than the aerial surveillance by the Fish and Wildlife Service of massive draining in North Dakota or any other state?
2. You stated in your testimony that there are at least 3000 violations of swampbuster in Minnesota (page 8). Do you have documentation of those violations?
3. To what do you attribute the alledged massive violation of swampbuster in Minnesota? Do you believe it is due to the failure of federal agencies to designate wetlands as wetlands, or to the failure of local county ASCS committees to impose the draconian penalties that appear to be required by the law?
4. In your testimony, you stated that drainage in North Dakota has actually increased, and you also noted 150 potential violations. As you know, there are over 33,000 farms in North Dakota, over half of which have some form of drainage system which must be maintained. Do you have documented evidence of increased draining?
5. The record of hearings and markups of the Food Security Act of 1985 shows a great many comments by proponents that swampbuster provisions were needed to prevent the conversion of wetlands into cropland. On page 17 of your testimony, you note that the "protection from agricultural conversion" of Type I (Class I) wetlands was a major reason why your group supported passage of swampbuster. Precisely what do you mean by "agricultural conversion?" More specifically, if a farmer has traditionally cultivated a wet spot for agricultural production, would you consider that he is "converting" it if he now alters the water regime?
6. USDA has determined that, as the law was finally written, temporary wetlands such as nuisance spots are within the scope of the definition of "wetland." This means that farmers who have traditionally cultivated temporary wetlands are now prevented from improving the land; in other words, the law places restrictions on land that has been cultivated for years. Do you believe that is what the Congress intended?

7. In your testimony, you stated that "temporary wetlands provide critical habitat for waterfowl" and therefore should not be exempted from swampbuster, even if traditionally farmed in the past. Do you mean to suggest that every wet spot is critical? Realistically, how many wet spots do you believe would be altered if some portion of previously-cultivated land is exempted from swampbuster restrictions? What portion of total wetland acreage would this represent?
8. Related to the preceding question, on page 18 of your testimony, you stated that if "temporary" wetlands are exempted, 20 to 30 percent of the remaining prairie potholes will no longer be protected; this seems to suggest that temporary wetlands constitute 20 to 30 percent of prairie wetlands. Yet on the same page you state that 18 percent of prairie potholes are temporary wetlands. Can you explain the difference in these figures? What is your definition of "temporary" wetlands?
9. You stated in your testimony that "the destruction of temporary wetlands continues at an alarming rate." First, do you mean destruction due only to agriculture, or does this include other activities? Second, is the statement based on just your opinion, or do you have actual data, such as annual surveys or measurements, that shows the annual "destruction" of wetlands by class?
10. On page 5 of your testimony, you noted that the U.S. Fish and Wildlife Service estimated an average annual loss of about 450,000 acres of wetlands nationwide between 1955 and 1975. You state that "there is no evidence to suggest that the trend has slowed" and conclude that an additional 900,000 acres of wetlands have been lost since the swampbuster law was passed in 1985. Do you mean to assert that 900,000 acres of wetlands have been drained between 1985 and 1987, based on an average estimate over a 20-year period that ended 13 years ago?
11. On page 24 of your testimony, you stated that prairie pothole destruction continues today at the rate of 33,000 acres per year. On page 20, you state that loss of Type I wetlands means further losses in already declining duck populations. However, the annual surveys by the U.S. Fish and Wildlife Service suggest that North Dakota duck populations, while fluctuating from year to year, has not declined significantly when viewed on a long-term basis. In total, the breeding duck population in 1987 (just under 3 million) exceeded the breeding duck population in 1955 (2.6 million). If drainage has indeed proceeded over the past 30 years at the rates you suggest, and these wetlands are indeed "critical" to the breeding duck population, how would you explain the figures reported by the Fish and Wildlife Service?



NATIONAL WILDLIFE FEDERATION

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HAND DELIVERED

May 4, 1988

The Honorable Wyche Fowler, Jr.
Chairman
Subcommittee on Conservation and Forestry
Senate Committee on Agriculture, Nutrition and Forestry
320 Hart Senate Office Building
United States Senate
Washington, DC 20510-6000

Dear Senator Fowler:

In response to your letter of April 7, 1988, the National Wildlife Federation submits the following response to Senator Conrad's questions concerning the "Swampbuster" provisions of the Food Security Act of 1985. The National Wildlife Federation appreciates the opportunity to supplement the record and to clarify its testimony of March 24, 1988.

Question #1: You stated in your testimony that draining of wetlands in North Dakota and throughout the upper midwest continues unabated. You also stated that there exists open disdain for swampbuster implementation in the prairie [sic] pothole states. Do you have documented evidence other than the aerial surveillance by the Fish and Wildlife Service of massive draining in North Dakota or any other state?

Response: The National Wildlife Federation is unaware of any studies which specifically document wetland drainage in the short term subsequent to the passage of the Swampbuster provisions. However, the documentation provided by the U.S. Fish and Wildlife Service (FWS) is persuasive evidence that substantial drainage is, in fact, occurring. The Fish and Wildlife Service is the federal agency vested with the responsibility of inventorying the nation's wetlands. Aerial photographs taken by the FWS in fulfillment of its responsibilities provide unbiased, incontrovertible proof of continued wetland drainage. Moreover, neither the agricultural

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community nor the U.S. Department of Agriculture (USDA) seriously dispute the occurrence of wetland destruction. North Dakota water engineer, Steve Hoetzer, stated at a public meeting regarding Swampbuster that he has seen more drainage this year than at any time in the past 20 years. The decline of wetland resources in North Dakota is so alarming that the legislature passed a state wetlands act in 1987. Chapter 61- 32 of the North Dakota Century Code was intended to implement a policy of no-net-loss of wetlands in North Dakota.

Question #2: You stated in your testimony that there are at least 3000 violations of swampbuster in Minnesota (page 8). Do you have documentation of those violations?

Response: Three thousand violations was an estimate provided by Soil Conservation Service (SCS) personnel. Since submission of our testimony, we have been informed by SCS that the estimate of 3000 actually referred to potential rather than confirmed violations. As the agency authorized to monitor swampbuster violations, the SCS is presumably a reliable source of such information.

Question #3: To what do you attribute the alledged [sic] massive violation of swampbuster in Minnesota? Do you believe it is due to the failure of federal agencies to designate wetlands as wetlands, or to the failure of local county ASCS committees to impose the draconian penalties that appear to be required by the law?

Response: The National Wildlife Federation believes that Swampbuster's ineffectiveness in Minnesota is the result of several factors: (1) lack of enthusiasm for enforcement of the law within the USDA, (2) political pressure on the USDA to refrain from enforcing the law, (3) vague interim rules implementing the Swampbuster legislation, (4) uncertainty among Agricultural Stabilization and Conservation Service (ASCS) and Soil Conservation Service officials concerning the proper

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administration of Swampbuster, and (5) intentional and inadvertent noncompliance by producers of agricultural commodities.

At this point, the National Wildlife Federation would also like to respond to Senator Conrad's characterization of the penalties for Swampbuster violations as "draconian." Wetlands are truly a national resource. Much of this country's wildlife depends upon wetlands for survival. The drainage of wetlands results in an irreversible decline in wildlife populations. As citizens, it is our responsibility to preserve this fragile resource for our own enjoyment and for the enjoyment of future generations of Americans. Consequently, it is not unduly harsh to prohibit the public subsidization of wetland destruction for the short-term economic benefit of a relatively small number of farmers.

It is also unlikely that any farmer will inadvertently violate the Swampbuster provisions. The USDA has provided a number of mechanisms to ensure that producers are not unfairly surprised by the law. The final rules specifically entitle farmers to the assistance of the ASCS and the SCS in determining the scope of Swampbuster. Moreover, the publicity surrounding Swampbuster has surely been sufficient to warn the agricultural community of the risks of wetland destruction. Those farmers acting in good faith will not lose their benefits.

We also question whether anything short of the current ineligibility provisions will deter wetland conversion nationwide. Recent studies indicate that farmers in the prairie pothole states may not be deterred from drainage, even with denial of 100 percent of their subsidy payments. Even if a more modest sanction could be devised which would deter drainage in the Dakotas, that same scheme is not likely to deter drainage in

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the bottomland hardwoods of the lower Mississippi River Valley. Swampbuster sanctions must be stringent enough to deter wetland drainage nationwide.

Question #4: In your testimony, you stated that drainage in North Dakota has actually increased, and you also noted 150 potential violations. As you know, there are over 33,000 farms in North Dakota, over half of which have some form of drainage system which must be maintained. Do you have documented evidence of increased draining?

Response: See Response No. 1. The National Wildlife Federation acknowledges that a large number of farms in North Dakota utilize drainage systems. In general, those systems commenced prior to 1985 are not subject to the Swampbuster provisions. However, the implication that wetland conversion is not a continuing problem is clearly unjustified. The agricultural community's strenuous objection to the implementation of Swampbuster is proof that future drainage is envisioned.

Question #5: The record of hearings and markups of the Food Security Act of 1985 shows a great many comments by proponents that swampbuster provisions were needed to prevent the conversion of wetlands into cropland. On page 17 of your testimony, you note that the "protection from agricultural conversion" of Type 1 (Class I) wetlands was a major reason why your group supported passage of swampbuster. Precisely what do you mean by "agricultural conversion?" More specifically, if a farmer has traditionally cultivated a wet spot for agricultural production, would you consider that he is "converting" it if he now alters the water regime?

Response: This question illustrates the confusion and lack of technical precision that has characterized the Swampbuster debate since the Act was passed. To accurately respond, one must ask what is meant by "traditionally cultivated," "wet spot" and "altering the water regime."

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Basically, the statute provides that a farmer "converts" a "wet spot" in violation of Swampbuster if:

- (1) the "wet spot" meets the Swampbuster wetland definition;
and
- (2) this wetland was not converted prior to December 23, 1985;
and
- (3) the farmer improves the drainage or otherwise alters the water regime of the wetland for agricultural production beyond what was the established practice on December 23, 1985.

The farmer can continue to cultivate wetlands as he has in the past, but if he improves wetland drainage which makes possible additional commodity production, he is converting wetlands in violation of Swampbuster.

Question #6: USDA has determined that, as the law was finally written, temporary wetlands such as nuisance spots are within the scope of the definition of "wetland." This means that farmers who have traditionally cultivated temporary wetlands are now prevented from improving the land; in other words, the law places restrictions on land that has been cultivated for years. Do you believe that is what the Congress intended?

Response: The Congressional intent is clear. The legislation was intended to protect all wetlands from further destruction as a result of agricultural practices. The law was not intended to outlaw existing drainage systems or traditional agricultural uses of property. Senator Conrad fails to appreciate the basic difference between traditional land use practices and improving agricultural production through drainage. If a farmer has traditionally been able to cultivate a wetland without the necessity of drainage, then the Swampbuster provisions are inapplicable. Conversely, if the farmer improves his production

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from traditional levels at the expense of a wetland, he acts in violation of the letter and intent of Swampbuster. Any improvement of agricultural production through drainage or other wetland manipulation changes the traditional pattern or practice of farming and should not be subsidized by federal benefits.

Question #7: In your testimony, you stated that "temporary wetlands provide critical habitat for waterfowl" and therefore should not be exempted from swampbuster, even if traditionally farmed in the past. Do you mean to suggest that every wet spot is critical? Realistically, how many wet spots do you believe would be altered if some portion of previously-cultivated land is exempted from swampbuster restrictions? What portion of total wetland acreage would this represent?

Response: Again, the reference to "wet spots" clouds the issue. To determine which "wet spots" are actually protected by Swampbuster, several questions must be asked:

- (1) is the "wet spot" a wetland as defined in Swampbuster? If so,
- (2) was it converted prior to December 23, 1985? If not,
- (3) is it exempt because it is being farmed as a result of a natural condition such as dry weather?
- (4) is it exempt because it has virtually no biological or hydrological value either individually or cumulatively, and its drainage would have a minimal impact on wetlands?

Therefore, those areas which Senator Conrad terms "wet spots" can continue to be farmed under the current law unless none of these conditions apply.

It is our view that those temporary wetlands which remain and which continue to have biological or hydrological value are

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indeed critical. Over 65% of the original wetlands in the prairie pothole region have already been drained. The network of small, ephemeral wetlands which remain are critical to migratory waterfowl and other wildlife, and have important hydrological values. There is no justification for an additional exemption from Swampbuster for previously cultivated wetlands.

It is difficult to state with precision the percentage of wetlands which are temporary. The wetland classifications are inherently subjective and different people may characterize a wetland differently. Moreover, the classification of a wetland may change depending upon the precipitation in successive years. As a result, a Swampbuster exemption for previously cultivated temporary wetlands, in the prairie pothole region, for instance, is likely to exclude from Swampbuster protection all Type I and numerous Type III wetlands ("Circular 39" classification). FWS has estimated that Type I wetlands constitute 18% of the remaining United States prairie wetlands acreage, totalling nearly one million acres. See, NWF Testimony, at 25. Estimating that 10% of the Type III wetlands in this region would also lose Swampbuster protection, FWS estimates that 20-30% of the remaining prairie wetlands in the prairie pothole states would lose Swampbuster protection under a new exemption for previously cultivated temporary wetlands. We believe a very high percentage of these previously cultivated wetlands would be drained if exempted from Swampbuster.

Question #8: Related to the preceding question, on page 18 of your testimony, you stated that if "temporary" wetlands are exempted, 20 to 30 percent of the remaining prairie potholes will no longer be protected; this seems to suggest that temporary wetlands constitute 20 to 30 percent of prairie wetlands. Yet on the same page you state that 18 percent of prairie potholes are temporary wetlands. Can you explain the difference in these figures? What is your definition of "temporary" wetlands?

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Response: See Response No. 7 and NWF Testimony at 16-18 and 38-39. Temporary wetlands, also called Type 1 wetlands, are defined by the U.S. Fish and Wildlife Service as seasonally flooded basins or flats in which the soil is covered with water, or is waterlogged, during variable seasonal periods and which is usually well drained during much of the growing season. U.S. Fish and Wildlife Service, Wetlands of the United States 20 (1971) ("Circular 39").

Question #9: You stated in your testimony that "the destruction of temporary wetlands continues at an alarming rate." First, do you mean destruction due only to agriculture, or does this include other activities? Second, is the statement based on just your opinion, or do you have actual data, such as annual surveys or measurements, that shows the annual "destruction" of wetlands by class?

Response: Actually, the quoted testimony read: "the destruction of these [temporary] wetlands by agricultural practices continues at an alarming rate." Statement of the National Wildlife Federation et al. 18 (March 24, 1988). It is drainage by farmers which threatens to eliminate most of the last remaining wetlands of this nation. The U.S. Fish and Wildlife Service reported that 87 percent of the 9 million acres of wetlands destroyed between 1955 and 1975 was the result of agricultural development involving drainage. U.S. Fish and Wildlife Services, Wetlands of the United States: Current Status and Recent Trends 31 (1984). Nonagricultural activities have been relatively insignificant.

Although the National Wildlife Federation is unaware of any studies which document recent drainage by wetland type, the general consensus among environmental interests and governmental administrators of Swampbuster is that temporary wetlands are receiving the brunt of agricultural drainage efforts.

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Question #10: On page 5 of your testimony, you noted that the U.S. Fish and Wildlife Service estimated an average annual loss of about 450,000 acres of wetlands nationwide between 1955 and 1975. You state that "there is no evidence to suggest that the trend has slowed" and conclude that an additional 900,000 acres of wetlands have been lost since the swampbuster law was passed in 1985. Do you mean to assert that 900,000 acres of wetlands have been drained between 1985 and 1987, based on an average estimate over a 20-year period that ended 13 years ago?

Response: The U.S. Fish and Wildlife Service's National Wetlands Inventory, referred to by Senator Conrad, is the most current, comprehensive report on the status of the nation's wetlands. The publication clearly indicates that wetland destruction is not a problem of the past. In fact, the report concludes that "[r]ecent population and agricultural trends point to increased pressure for converting wetlands to other uses, especially cropland. Increased wetland protection efforts by all levels of government and by private parties are needed to halt or slow wetland losses and to enhance the quality of the remaining wetlands." U.S. Fish and Wildlife Service, Wetlands of the United States: Current Status and Recent Trends, vii (1984). In light of the USFWS assessment of the status of wetlands, an estimate of 900,000 acres of wetlands destroyed since the passage of Swampbuster is justified and probably conservative.

Question #11: On page 24 of your testimony, you stated that prairie pothole destruction continues today at the rate of 33,000 acres per year. On page 20, you state that loss of Type I wetlands means further losses in already declining duck populations. However, the annual surveys by the U.S. Fish and Wildlife Service suggest the North Dakota duck populations, while fluctuating from year to year, has [sic] not declined significantly when viewed on a long-term basis. In total, the breeding duck population in 1987 (just under 3 million) exceeded the breeding duck population in 1955 (2.6 million). If drainage has indeed proceeded over the past 30 years at the rates you suggest, and these wetlands are indeed "critical" to the breeding duck population, how would you explain the figures reported by the Fish and Wildlife Service?

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Response: We understand that you have requested a detailed response to essentially the same question from the FWS. In light of their responsibilities for inventorying lands and duck populations, we refer you to the FWS response. We would like to be able to review their response before we provide any further analysis.

We appreciate the opportunity to respond to these questions. We would be happy to further clarify any of our statements if needed.

Sincerely,

Wayne Baron
John P. Ernst

Wayne Baron
Director
Prairie Wetlands Resource Center



Working for the Nature of Tomorrow.

NATIONAL WILDLIFE FEDERATION, 1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

Office of the President

May 13, 1988

HAND DELIVERY

The Honorable Peter C. Myers
Deputy Secretary
U.S. Department of Agriculture
14th St. and Independence Ave., S.W.
Washington, DC 20250

Re: Conservation Title, Food Security Act

Dear Pete:

I want to thank you for convening the May 9 meeting of agency personnel and conservation and agricultural groups to discuss administration of the Conservation Title of the Food Security Act of 1985. The National Wildlife Federation is particularly concerned with the "Swampbuster" provisions of the Act, and we appreciated the opportunity to present our views and questions to agency heads.

However, at the meeting, Milton Hertz, Administrator of the Agricultural Stabilization and Conservation Service, confirmed previous statements that the U.S. Department of Agriculture (USDA) is planning to issue regulations that will allow Swampbuster and Sodbuster violators in vaguely described circumstances to remain eligible for agricultural benefits notwithstanding the express language to the contrary in the statute. 16 USC 3811 and 3821. We do not believe any language in the Act provides the USDA with authority to issue such regulations.

Aside from the lack of statutory authority, we have seen no evidence demonstrating the need for such a modification of the regulations regarding Swampbuster. Administrator Hertz stated at the May 9 meeting that such relief was intended for the producer who "inadvertently" drains one acre of wetland. Since the Act permits farmers to cultivate unconverted wetlands and does not apply to wetlands converted before December 1985, we do not understand how someone can, in the legal sense, "inadvertently" drain a wetland. This is particularly difficult

The Hon. P. C. Myers
 May 13, 1988
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to understand if the conversion occurs after jurisdictional wetlands have been delineated on the producer's farm. Although many hypothetical situations have been described by USDA officials and others, no one has presented any evidence of a producer who is threatened with loss of benefits due to a truly inadvertent drainage of wetlands. Indeed, we know of only two producers in the United States who have lost benefits for noncompliance with Swampbuster.

At the same meeting, Administrator Hertz assured our counsel, Jan Goldman-Carter, that no such amendments to the regulations would be promulgated without formal notice and an opportunity for public comment. We shall rely upon this assurance. If Ms. Goldman-Carter's understanding of Administrator Hertz's statement with regard to proposed rulemaking is in error, please inform us immediately.

During the May 9 meeting Wilson Scaling, Chief of the Soil Conservation Service (SCS), stated that his agency is using or plans to use cropping history as a factor in making Swampbuster "minimal effects" determinations pursuant to Section 3822(c), especially in so-called "nuisance spots" which meet the Act's technical definition of "wetland." Again, we see no statutory authority for such a policy because the exemption is limited to those conversions where the individual and cumulative effect "on the hydrological and biological aspect of wetland is minimal." 16 USC 3822(c). Cropping history seems not to be relevant to such a determination.

Chief Scaling's statement also appears to contradict the SCS procedural manual which does not identify cropping history as a factor in making minimal effects determinations. Please provide us with copies of any USDA documents reflecting this policy as well as a description of the means by which this policy will be implemented by field personnel. Since we are in the midst of a growing season, I would appreciate an expeditious response to this request. At the May 9 meeting USDA personnel underscored repeatedly the need for timely, accurate information in the field on administration of Swampbuster. Because the cropping history factor does not appear in the procedural manual, I am sure you can appreciate our interest in receiving authoritative clarification of the guidance being given to the field.

Again, Pete, I appreciate your willingness to provide a forum to address these issues head-on, as well as the

The Hon. P. C. Myers
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progress the USDA has made thus far in administering the Conservation Title. I hope we can continue to cooperate in our efforts to make this landmark legislation work.

Sincerely,

day

JAY D. HAIR

JDH:jj

c: Milton Hertz, Administrator, Agricultural Stabilization
and Conservation Service
Wilson Scaling, Chief, Soil Conservation Service

Senator FOWLER. Our next witness is Gary Bales of the Wildlife Charitable Trust.

**JOINT STATEMENT OF GARY L. BALES AND MICHAEL DOWLING,
COTRUSTEES, WILDLIFE HABITAT CHARITABLE TRUST,
DEVINE, TX**

Mr. BALES. Mr. Chairman, I would like to have Mr. Dowling present our statement.

Mr. DOWLING. Mr. Chairman, I am Mike Dowling and with me is Gary Bales, co-trustees of the Wildlife Habitat Charitable Trust, and we would like to address the need for a modified Conservation Reserve Program.

Present rules and debt service requirements have excluded much of the land that needs to be enrolled in acreage set-aside programs. There is an urgent need to design a modified Conservation Reserve Program [CRP] which will focus on distressed farms and simultaneously accomplish all seven of the program's original objectives. The sheer magnitude of the problem makes it imperative that the modified CRP produce enduring and cost effective solutions.

The second RCA appraisal of soil, water, and related resources on non-Federal land in the United States projects the amount of American cropland needed to meet the demands for food and fiber could be cut almost in half by the year 2030.

This reduction of land in cultivation will occur while agriculture is still saddled with nearly \$30 billion more debt than the industry can repay. Under current commodity price and interest rate conditions, farm lenders will need to restructure more than \$100 billion worth of farm loans. The modified CRP will eventually need to deal with almost 200 million acres of marginal farmland.

As this major shift in land use occurs, more farmers will use up the last of their equity in an effort to delay the inevitable. As we all know, many farms have passed the point of no return as viable businesses. The crisis is already affecting the retail and service sectors of rural communities. State and local governments are experiencing decreases in sales and property tax revenues as farm incomes and land values decrease. The impact of this change on farmers and rural communities is devastating.

The Senate Committee on Agriculture, Nutrition, and Forestry has led Congress to provide important tools to help minimize the human suffering and degradation of natural resources during this land use transition period. Most noteworthy of these tools are the conservation provisions in the 1985 farm bill and mandating that farm debt be restructured. The dynamic potential of this legislation is paralyzed, however, without a proper linkage between the CRP and farm loans to be restructured.

Quoting John Baden, "The key to reform lies in designing systems that lead people to do good while doing well." Such a system is evolving rapidly. Crucial flexibility in the CRP can be provided by combining the concepts of the new multiyear acreage set-aside legislation like S. 2106, S. 2045 and S. 1521.

The most enduring benefits and cost effective solutions can be accomplished by focusing the modified CRP on farms which are collateral for problem loans and eligible for loan restructuring. These

farms should be entered into a multiyear soil rejuvenation program while the farm operations are being analyzed by specially trained professional farm managers.

This feasibility analysis will identify those prairies that should never have been plowed and those wetlands that should never have been drained. Much of this land would be more valuable if planted in trees or converted to wildlife habitat. It should be done at the least cost to the Government. The conservation easement concept can be most helpful in designating and managing these types of properties.

The obvious solution to the marginal farmland problem is to convert those farms, where loans should be restructured, to more profitable low-input, sustainable farming methods.

There are already numerous successes being reported on increased profitability and topsoil protection under alternative agricultural practices. For instance, USDA soil scientist James Power advocates extensive legume variety testing to obtain information "so that we can design the ideal cropping and management systems for a given climate." Some additional research still needs to be done but it can be done most economically on a large scale on CRP lands.

If farm lenders, like Farmers Home Administration [FmHA] restructure loans before permitting the farmers to convert to more profitable, low-input methods, the debt service barrier will prevent the borrowers from making a financially beneficial management conversion. The lender will also have made itself liable for damages "for control and undue interference" because their actions will have inhibited the borrower from improving his or her financial position.

Restructuring farm loans is frequently easier said than done. There are almost always problems associated with the soil, use of the land, farm or financial management which should be solved before a restarting farmer has a real chance to succeed. Even if Farmers Home Administration and other lenders had the expertise and personnel to conduct their own loan workouts, their involvement as lenders makes them appear to be biased, and they are automatically vulnerable to claims of undue interference.

Farm loans should only be restructured by unbiased third parties acting with the authority of receivers. There are a large number of exceptionally talented people in the private sector who know how to implement the Senate Agriculture Committee's positive agenda for change.

The proper linkage between the CRP and farm loans to be restructured can best be implemented by the nonprofit, private sector.

Congress needs to provide a bridge between the old methods that have failed and feasible, low-input farming methods. A modified CRP can be part of that bridge to change many farmers from financial failures to financial successes.

The objective of curbing production of surplus commodities can be achieved by rotating 20 to 50 million acres of farmland at a time through a multiyear management conversion cycle. Instead of passively retiring land to hold crop production in check, this period of chronic overproduction can be used to redirect farming methods

toward increased profitability and sustainability. That land which should have been cultivated can be identified and dealt with as economically and permanently as possible.

THE NEED FOR ENABLING LEGISLATION IS OBVIOUS

There is an urgent need to authorize a pilot program to demonstrate this modified CRP concept. A plan for conducting this pilot program on Farmers Home Administration inventory lands was presented recently to officials at USDA.

We were then recently notified by the Administrator of the Farmers Home Administration, Mr. Vance Clark, that unless the law is changed, present regulations prohibit this pilot program from being implemented.

Mr. Chairman, I would you say to you that in your opening statement you expressed the hope this hearing would turn up new ideas that can enhance our stewardship either through the next farm bill or in separate legislation. We believe this to be such an idea.

That is the end of my statement. Thank you very much, sir.

[The prepared statement of Wildlife Habitat Charitable Trust follows:]

THE NEED FOR A MODIFIED
CONSERVATION RESERVE PROGRAM

Prepared For

United States Senate

Committee

On

Agriculture, Nutrition, and Forestry

By

WILDLIFE HABITAT Charitable Trust

March 1988

THE NEED FOR A MODIFIED
CONSERVATION RESERVE PROGRAM

Introduction

Present rules and debt service requirements have excluded much of the land that needs to be enrolled in acreage set-aside programs. There is an urgent need to design a modified Conservation Reserve Program (CRP) which will focus on distressed farms and simultaneously accomplish all seven of the program's original objectives. The sheer magnitude of the problem makes it imperative that the modified CRP produce enduring and cost effective solutions.

The Second RCA Appraisal of Soil, Water, and Related Resources on Nonfederal Land in the U.S. projects the amount of American cropland needed to meet demands for food and fiber could be cut almost in half by the year 2030.

This reduction of land in cultivation will occur while agriculture is still saddled with nearly \$30 billion more debt than the industry can repay. Under current commodity price and interest rate conditions, farm lenders will need to restructure more than \$100 billion worth of farm loans. The modified CRP will eventually need to deal with almost 200 million acres of marginal farmland.

As this major shift in land use occurs, more farmers will use up the last of their equity in an effort to delay the inevitable. As we all know, many farms have passed the point of no return as viable businesses. The crisis is already affecting the retail and service sectors of rural communities. State and local governments are experiencing decreases in sales and property tax revenues as farm incomes and land values decrease. The impact of this change on farmers and rural communities is devastating.

The Senate Committee on Agriculture, Nutrition, and Forestry has led Congress to provide important tools to help minimize the human suffering and degradation of natural resources during this land use transition period. Most noteworthy of these "tools" are the conservation provisions in the 1985 farm bill and mandating that farm debt be restructured. The dynamic potential of this legislation is paralyzed however, without a proper linkage between the CRP and farm loans to be restructured.

"The key to reform lies in designing systems that lead people to do good while doing well."¹ Such a system is evolving rapidly. Crucial flexibility in the CRP can be provided by combining the concepts of new multiyear acreage set-aside legislation like S. 2106, S. 2045 and S. 1521.

The most enduring benefits and cost effective solutions can be accomplished by focusing the modified CRP on farms which are collateral for problem loans and eligible for loan restructuring. These farms should be entered into a multiyear soil rejuvenation program while the farm operations are being analyzed by specially trained professional farm managers.

"There is an immediate need for an income analysis based on current management, current farm prices, and current farm costs."² This needs to be done before any lender even thinks about restructuring a farm loan. The analysis will help identify whether the limits on farm profitability are in the management or the land itself.

This feasibility analysis will identify those prairies that should never have been plowed and those wetlands that should never have been drained. Much of this land would be more valuable if planted in trees or converted to wildlife habitat. If the land should be converted to wildlife habitat, it should be done so at the least cost to the government. The conservation easement concept can be most helpful in designating and managing these types of properties.

Conventional, high-input farming practices on marginal lands are high-risk and frequently not profitable. These kinds of farms are never competitive in a falling price commodity market.

The obvious solution to the marginal farmland problem is to convert those farms, where loans should be restructured, to more profitable low-input, sustainable farming methods.

The result will be maximally profitable farming operations with built-in cross compliance plans. Then the farm loans can be restructured with minimal risk to the borrowers and the lenders can maximize recovery of their loans.

¹ Quoted from an article by John Baden which appeared in the March 21, 1984 edition of The Wall Street Journal.

² Suter, Robert C. (1987) "The Capitalization of Income Revisited, Part II". J. of the American Society of Farm Managers and Rural Appraisers. Vol. 51, No. 2, pp. 22-27.

There are already numerous successes being reported on increased profitability³ and topsoil protection⁴ under alternative agriculture practices. USDA Soil Scientist James Power advocates extensive legume variety testing to obtain information "so that we can design the ideal cropping and management systems for a given climate."⁵ Some additional research still needs to be done but it can be done most economically on a large scale on CRP lands.

"We need to look for ways to reduce costs in producing our principal crops," says Charles Francis, Co-chairman of the Alternative Agricultural Opportunities task force and Extension Crops Specialist at the University of Nebraska. "That means reducing inputs, reaching for greater resource efficiency, and diversifying the total farming operation so that people aren't so vulnerable to trends beyond their control."

"There is a need for change in our way of doing business, and this is an opportunity to make it happen," said Patrick Madden who has been named national program manager for the \$3.9 million USDA program in "low-input farming systems research and education."

More than farming systems research and education is involved in changing our way of doing business, however. We already know that takes a minimum of four years to implement the transition to low-input, sustainable farming systems (Exhibit C, Table 1). Income has been found to be severely depressed by declining yields (-35%, -22% and -15%) during the first three years of the transitional phase (Exhibit C, Figure 2).

This temporary reduction in farm income is a double barrier. Lenders have extensive liability in loan workouts. Borrowers are becoming much more aggressive in their response to what they perceive as improper conduct by lenders including the duty of good faith and fair dealing, control and undue interference, RICO claims and federal tax liabilities.

³ Exhibit B: Goldstein, W. A. and Young, D. L. (1987) "An agronomic and economic comparison of a conventional and a low-input cropping system in the Palouse". J. of Alternative Agriculture. Vol. II, No. 2.

⁴ Reganold, J. and Elliott, L. (1988) Nature.

⁵ Exhibit D: Power, J. F. (1987) "Legumes: Their potential role in agricultural production." J. of Alternative Agriculture, Vol. II, No. 2.

If farm lenders, like FmHA, restructure loans before permitting the farmers to convert to more profitable low-input methods, the debt service barrier will prevent the borrowers from making a financially beneficial management conversion. The lender will also have made itself liable for damages "for control and undue interference" because their actions will have inhibited the borrower from improving his/her financial position.

Restructuring farm loans is frequently easier said than done. There are almost always problems associated with the soil, use of the land, farm or financial management which should be solved before a restarting farmer has a real chance to succeed. Even if FmHA and other lenders had the expertise and personnel to conduct their own loan workouts, their involvement as lenders makes them appear to be biased and they are automatically vulnerable to claims of undue interference.

Farm loans should only be restructured by unbiased third parties acting with the authority of receivers. There are a large number of exceptionally talented people in the private sector who know how to implement the Senate Agriculture Committee's positive agenda for change.

Congress needs to provide a "bridge" between the old methods that have failed and feasible, low-input farming methods. A modified CRP can be part of that "bridge" to change many farmers from financial failures to financial successes.

The objective of curbing production of surplus commodities can be achieved by rotating 20 to 50 million acres of farmland at a time through a multiyear management conversion cycle. Instead of passively retiring land to hold crop production in check, this period of chronic overproduction can be used to redirect farming methods toward increased profitability and sustainability. That land which should never have been cultivated can be identified and dealt with as economically and permanently as possible.

The Need for Enabling Legislation

There is an urgent need to authorize a pilot program to demonstrate this modified CRP concept. A plan for conducting this pilot program on FmHA inventory lands was presented to Wilson Scaling and George Dunlop. Mr. Dunlop enthusiastically presented the concept to other officials at USDA.

We were recently notified by FmHA Administrator Vance Clark, that unless the law is changed, present regulations prohibit this pilot program from being implemented (Exhibit A).



In 1846 this area was described as being covered with dense vegetation and "There is excellent trout fishing but the grass makes travel by wagon very difficult."

It was cleared and farmed then grazed into a desert.

The top photo was taken on the Page Ranch in Arizona in November 1982.

The bottom photo was taken about nine months later. Rainfall occurs more frequently and in greater amounts over vegetated land than barren land.





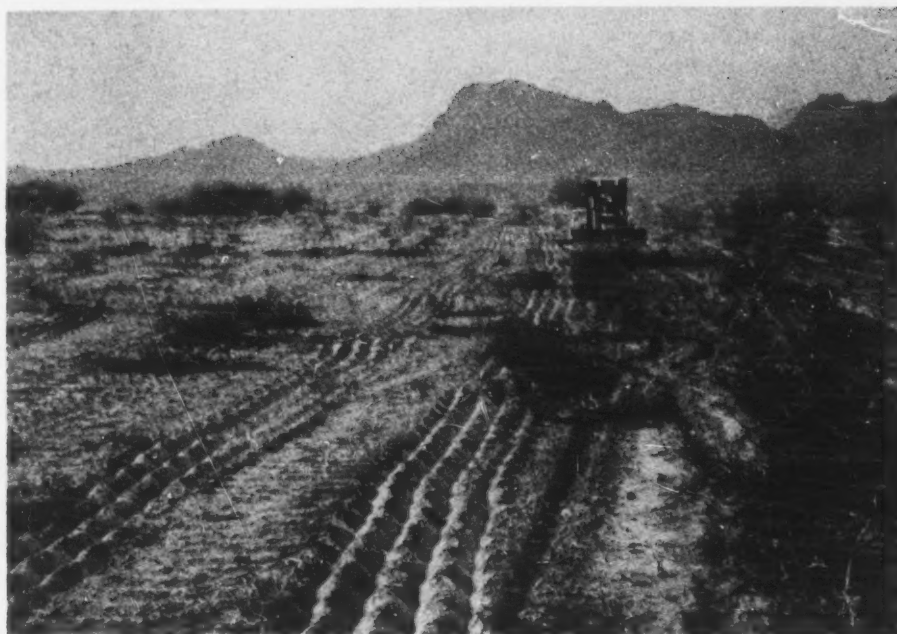
Wind has blown all the topsoil off this abandoned farmland in Utah. These evergreen shrubs are important winter feed for mule deer, elk and Bighorn sheep. Below, tall grass prairie has been restored on a ranch in Arizona without irrigation or fertilization.





Above, desertified rangeland on the Falcon Valley Ranch near Tucson, Arizona in March 1980. Below, the same site after special treatment and seeding was photographed in September 1980.





Above, brush control and accelerated revegetation on the Agua Blanco Ranch near Tucson, Arizona in June 1983. Below, the same site as it appeared four months later.



Frequently Asked Questions

Q. How did we get into this situation where we have too much land in cultivation?

A. This question can best be answered by referring to three recently published articles on this subject. These were written by Dr. Robert C. Suter of Purdue University and Dr. Stassen Thompson of Clemson University. Both of these gentlemen are agricultural economists with impeccable credentials.

Dr. Thompson wrote, "Credit availability played a major role in fueling the farmland market of the 1970s. Many farmers practiced what was being preached--leveraging.

"Two things are clear:

1) if the purchase of farmland is credit financed, interest payments cannot be met from income generated from the land; and 2) if a farmer can borrow money at 7.5% and invest it in an asset that yields a 17.3% return, then he or she should do so and many did.

"The problem with this investment decision is that capital reserves will be depleted in subsequent years if income levels do not rise or payments have to be made from income from other sources. The asset must continue to appreciate and be sold to reap the benefits of appreciation. Most farmers who purchased land in the 1970s did not intend to do this."

Q. If nothing is done will the situation stabilize itself or get worse?

A. The worldwide land use pattern is that farming activities tend to push onto marginal lands during times of scarcity and high commodity prices. When farming is no longer feasible, the most frequent alternative land use is intensive livestock grazing to meet economic needs. Overgrazing is the forerunner of desertification which is really a collapsed ecosystem that promotes drought and its own expansion.

Desertification can be reversed, as our colleagues have demonstrated in the preceding photographs, but it requires a high level of technical competence and plants that are genetically adapted to the disturbed environment.

- Q. What are the statistical, technical and financial merits of this program?
- A. Some articles which have appeared in financial publications have indicated that many of the farm loans which have already been restructured have not had adequate analysis and documentation. Failure rates of up to 40 percent have been predicted.

The technical merits of low-input, conservation-tillage farming practices for reducing water and wind erosion, reducing sedimentation, improving water quality and creating better habitat for fish and wildlife are already well documented.

The benefits of multiyear acreage set-aside programs is documented in Exhibit I.

FmHA Administration officials estimate that their cost for administering the loan restructuring program will cost \$500 million over the next five years. This estimate is thought to be too low by the Budget Director. The Food Security Act of 1985 should be amended to increase the number of acres placed in the CRP under this type of program. This new program will be less costly than the present CRP program, paying deficiency payments and it is more cost/benefit effective than the 0-92 program. It doesn't require costly incentives to enter land into the program.

The Second RCA Appraisal: Analysis of Condition and Trends (1987) reported that:

Additional annual savings of between \$3.2 and \$13 billion could be obtained by reducing offsite damages associated with water erosion and run-off from agricultural land.

Reducing sediment damages to water storage facilities, conveyance areas, and transportation systems can save up to \$2.4 billion annually.

Economic value of commercial and recreational fisheries could be increased by as much as 40 percent by improving water quality and controlling erosion.

Hundreds of millions of dollars of economic activity could be generated from wildlife-associated recreation. For example, pheasant hunters increased 250 percent and contributed \$60 million annually to South Dakota during the Soil Bank program in the 1950s.

Q. What is involved in restructuring a farm loan? Can you be specific?

A. Restructuring many delinquent farm loans will require:

1. A complete feasibility study of the property conducted by an unbiased third party.
2. The study must contain a highest and best sustainable use analysis of the property.
3. Management practices must be analyzed and refined to determine the least risk and most economically resilient farm operation plan.
4. Those lands which never should have been put into cultivation need to be identified and permanently retired from commodity crop production at the least possible cost.
5. Preparing a farm management plan (low-input alternative agriculture land use programs may take up to four years to develop and implement).
6. The costs of implementing cross compliance conservation and/or change in land use or management plans must be factored into the income and expense analysis.
7. After the foregoing steps have been completed, an analysis needs to be done which separates the components of Market Value into:
 - (a) agriculture use value and
 - (b) other components of value such as hedge against inflation value, recreational value, potential development value, water and mineral rights value etc.
8. Many farm loans may be restructured according to the agricultural use value. If the Market Value exceeds the agriculture use value, the difference may be attributed to other components of value. Depending upon how much equity the farmer has in the property, the value of the non-income generating components of value are, to some extent, the property of the lender.
9. The other components of value can be held in Trust until they can be redeemed by the farmer or be systematically marketed. Any appreciation in these other components of value can be shared by the borrower and the lender.

Q. Aren't farm lenders already doing this?

A. The number of farm loans to be restructured dwarfs the amount of expertise available to handle it. The farm lenders that are restructuring loans by themselves, without analysis and documentation provided by unbiased third parties, are leaving themselves vulnerable to extensive legal action. See Exhibit H.

Q. Then who can do it?

A. A team of experts (Exhibit F) from all over the country is prepared to demonstrate how this should be done and teach the complete procedure to other qualified individuals.

The entire process for restructuring a farm loan so that all interested parties are treated fairly requires time and the professional services of a team working with the authority of a receiver. A court of competent jurisdiction may appoint a receiver in any case in which a receiver may be appointed under the rules of equity.

Q. What kind of legal status would be required to do this?

A. Exhibit E is a copy of a suggested Trust Agreement which could be used to establish a conditional, fiduciary contract to make the pilot program operational.

Q. How large does this pilot program need to be?

A. The pilot program should be at least two million acres. It must be sufficiently large to establish bench-mark case studies in each farming area and also large enough to spread the fixed costs of new technology application and program administration over increased acreage to lower the average total costs per acre.

Q. Is anything like this being done now?

A. Yes, a similar trust program, except for the conservation provisions, has been developed by the State Bank of South Australia and by the Rural Land Trust in Australia. A copy of their explanation of the establishment and operation of their farm trust is Exhibit G. These land trusts have been invited to start operations in New Zealand and Canada.

Q. Let's get to the bottom line. What are the main benefits of this program for farmers?

A. The main benefits are to allow existing owner/operators a chance to stay on their properties and the opportunity to work their way out of their debt problems. Professional farm management assistance is provided to insure that the most sustainable, profitable farm management plans are implemented. It means that the property is not sold in a forced sale on a very depressed property market, with subsequent minimal benefit to the owner. It means the operator can continue to run the family farm and benefit from technological advances that can help him be more profitable and competitive. It provides breathing space for children to complete their education and to find employment. It means the farmer and his wife can stay there in the family home until other solutions can be found. It may be that planned retirement is only a few years away.

Q. Why should the program be done by the non-profit private sector?

A. The program can be conducted at the least cost by non-profit agencies which can subsidize the whole operation with part time help, volunteer help, by forming linkages with other non-profit organizations etc. By taking an unbiased receivership position rather than that of a legal referee, the entire management and reorganization program can be done for about the same cost as a court appointed trustee fee.

Q. What is the projected cost of this pilot program?

A. The cost of the pilot modified CRP program is expected to be between \$30 and \$40 per acre per year and will require no other incentives. These costs include payment of taxes and a living allowance for the farmer.

The whole idea is to see how much can be achieved, not how profitable the program administration business can be.



United States
Department of
Agriculture

Farmers
Home
Administration

Exhibit A

Washington
D.C.
20250

FEB 2 1968

Mr. Gary L. Bales
Trustee
Wildlife Habitat Charitable Trust
P.O. Box 637
Devine, Texas 78016

Dear Mr. Bales:

It was a pleasure to meet you the other day and to compare notes and dreams about the Wildlife Habitat Charitable Trust. You obviously have a fine team of dedicated individuals who have the best interest of rural America in mind as you attempt to do those common sense, logical things that need to be done in "salvaging" America's farmland.

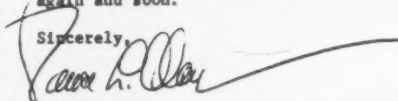
As I promised you - I did ask our Office of General Counsel to review your proposal and to review in detail the trust agreement that you have proposed in connection with the Farmers Home Administration inventoried farm land. As I suspected and as I shared with you during our meeting there just is no authority for this type of arrangement between our Agency of Government and the Charitable Trust. Our General Counsel has used such descriptions as - "Farmers Home Administration cannot transfer inventory land to this trust, except insofar as such transfers might result from open market sales of 'surplus' farm property." And - "FmHA's authority to dispose of such property is strictly limited by its governing statutes and it has no legal authority to transfer any inventory property acquired through the liquidation of Farmers Program loan collateral except by sale. — (sic). Of course, there is always referenced authority for such statements and they quote - "statutory sections 335 and 354 of the Consolidated Farm and Rural Development Act, 7 U.S.C., as amended by section 610 and 616 of the Agriculture Credit Act of 1987.

Certainly all of this has again convinced me, Mr. Bales, that we are fighting a losing battle in attempting to work together with the Trust to meet the goals that you and your associates have in mind.

I regret that we could not do better. Perhaps somewhere in the future, the laws might change that would give us a bit more negotiating room as we both attempt to improve the quality of life of rural Americans and conserve our most important resource - American farmland.

Again, it was nice, meeting you. I hope we have the opportunity to do that again and soon.

Sincerely,


VANCE L. CLARK
Administrator

cc: George Dunlop



Wilson Scalap
Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

Exhibit B

An agronomic and economic comparison of a conventional and a low-input cropping system in the Palouse

Walter A. Goldstein and Douglas L. Young

Abstract. The variable costs and net returns for a conventionally managed rotation and for a low-input, legume-based rotation were compared under 1986 economic conditions in the Palouse region of Washington. The conventional system was a four-year wheat/barley/wheat/pea rotation with fertilizers and pesticide inputs each year. The low-input system was a three-year pea-medic/medic/wheat rotation with pesticide inputs used only on peas. As the biennial medic was allowed to set and drop seed and revoluteer in subsequent stands of spring peas, the system was called the "perpetuating-alternative-legume-system" or "PALS". Identical wheat yields were assumed between the two systems as field trials showed that wheat which followed medic without fertilizer produced similar yields to wheat after cereals with fertilizer. Pea yields were assumed to be lower under PALS due to competition from the medic. Medic was neither harvested nor grazed. For PALS, herbicides on wheat were replaced by harrowing because trials showed that wheat after medic competed better with weeds than wheat after cereals. Variable costs for PALS were only 44 percent of those for the conventional system (\$36.82 versus \$129.40/acre/year). Fertilizers, pesticides, and application accounted for 56 percent of the costs for the conventional system, but only 26 percent for PALS. The conventional system generated higher gross returns because a crop was harvested every year. Because of its lower production costs, PALS generated higher net returns when crops were sold for market prices. The conventional system was more profitable than PALS only when wheat and barley were valued at current government target prices. Under high and low yielding conditions PALS was more profitable than the conventional system when wheat prices were lower than \$3.50 and \$5.36/bushel, respectively. Government target and local market wheat prices in 1986 were \$4.38 and \$2.40/bushel, respectively. If world market competition and domestic policy pressures reduce crop price supports and grain prices in the future, low-input systems would become more profitable than conventional practices. PALS is promising but requires further agronomic evaluation before recommendations can be made.

Introduction

The current financial stress in U.S. agriculture and public concern with pollution from agricultural chemicals have renewed interest in low-input and low-cost farming systems. In the high rainfall (18-24 inch/year) cropping region of the

Washington-Idaho Palouse, winter wheat (*Triticum aestivum* L.), barley (*Hordeum vulgare* L.), and peas (*Pisum sativum* L.) are commonly grown. Sweetclover (*Melilotus alba* Desr.) or alfalfa (*Medicago sativa* L.) were previously employed in rotations to alleviate disease and weed problems and to fix nitrogen for cereals; these systems used little fertilizer or pesticides (Law et al., 1945; Kreizinger and Law, 1949; Pawson et al., 1961). In the 1950's and 1960's sweetclover and alfalfa were profitably replaced by low-cost fertilizer and pesticide inputs (Pawson et al., 1961). How-

ever, conditions have changed; greater awareness of detrimental environmental impacts of chemical inputs, rising costs of chemical inputs relative to the prices of grain crops, and increasing disease problems in intensive cereal rotations have stimulated a reexamination of systems which use legumes instead of fertilizers and pesticides. In particular, the potential yields, costs, and net returns should be examined for crop rotations featuring widely neglected legumes that are self-seeding and do not compete excessively with cash crops.

In this paper, the estimated level and composition of variable costs for an experimental, low-input, legume-based system called PALS (perpetuating-alternative-legume-system) are compared with the same for a conventional system under 1986 economic conditions. Based on recent experimental yield data, the two systems are compared for net returns over variable costs on a hypothetical low-yielding and high-yielding site or year. The effects of government support programs are examined by using both government target prices and 1986 market prices to calculate gross and net revenues under alternative cropping systems. Finally, the profitability difference between the systems is examined for sensitivity to changes in the sales price of winter wheat.

Study data and assumptions

Caplan (1986) and Caplan et al. (1987) recently developed budgets for several standard rotations and management systems for the Palouse region using the Washington state adaptation of the Oklahoma State University budget

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generator. These budgets, prepared for use by the Cooperative Extension Service, were reviewed for accuracy by local extension personnel and sample farmers from the study area. The analysis in this paper is based on an adaptation of Caplan's budgets to the conventional and PALS rotations (Goldstein, 1986).

For this study, we used a common conventional system consisting of a four-year grain cropping rotation:

- Year 1: winter wheat
 - Year 2: spring barley
 - Year 3: winter wheat
 - Year 4: spring peas
- and for the PALS a three-year rotation:
- Year 1: spring peas + medic
 - Year 2: medic
 - Year 3: winter wheat

In the eastern Palouse, farmers typically rotate winter wheat with a spring crop of dry peas, lentils, or barley. A two-year winter wheat-pea or lentil rotation precludes a potential problem with barley volunteering back into the following winter wheat crop and lowering its grade. However, due to farm program incentives or market price outlook, eastern Palouse farmers sometimes plant spring barley, with appropriate variety selection and tillage practices to control volunteering, preceding winter wheat. The four-year system listed above is an intermediate conventional rotation with one year of barley and one year of peas rotated with winter wheat.

The legume used in the PALS rotation was a biennial black medic (*Medicago lupulina* L.) cultivar similar to the Danish cultivar 'Virgo' which is prostrate and competes little with companion crops in its year of establishment but produces a vigorous upright growth in its second year. On the first year of the PALS system, medic was seeded in alternate rows with peas. In the second year, the medic produced seed in June and July and died. Medic residues and seed were incorporated with a disk in the fall and winter wheat was seeded for harvest in August of the third year. On the fourth year, the medic seed germinated in a seeded crop of spring peas, and the rotation continued as before. Since black medic volunteers a thick stand in spring-seeded crops, the system has a "perpetuating" aspect. Similar wheat systems with annual medic spe-

cies are employed in Australia (Puckridge and French, 1983), and, in some cases, the medic has not been reseeded for over 30 years (personal communication, R. I. Papendick, USDA Soil Scientist, Pullman, WA). In this study, reseeding was assumed every three cycles (nine years).

Table 1 summarizes the fertilizer and pesticide inputs for each crop in the two systems. For conventionally managed wheat, the fungicide Benlate and 30 lbs./acre of N were applied by airplane in March. For peas, the insecticide Imidan was applied by airplane in July. All other pesticides were applied with ground spray-applicators. In PALS no pesticides or fertilizers were used on the winter wheat or medic. However, the peas received the same pesticide inputs as conventionally managed peas. The assumed use of Fargo and Dinoseb-amine on medic is for calculation purposes only (registration of Dinoseb is currently suspended) and is not recommended.

The PALS winter wheat was harrowed with a tine harrow in April for weed control. This treatment has been observed to reduce weed populations approximately 60 percent (Goldstein, 1986). Wheat after medic is more able to compete with weeds which is possibly due to control of wheat root diseases by medic (Goldstein, 1986).

Trials were carried out in 1985 with winter wheat in Pullman (Goldstein, 1986) and spring wheat in Davenport

(Goldstein, unpublished data). On both sites weed control measures were not used. Wheat which followed wheat had approximately 2.5 times more weeds at harvest than wheat which followed medic. In the 1984 trials, both winter wheat which followed barley and medic were harrowed in the spring for weed control (Goldstein, 1986). Wheat plots which followed barley averaged 27 times more weeds at harvest than wheat plots which followed medic. In a similar study, wheat which followed harvested peas had 2.1 times more weeds before harvest than wheat which followed biennial red clover (*Trifolium pratense* L.) as a green manure (personal communication, D. F. Bezdek, Washington State University, Dept. of Agronomy and Soils).

Data from two years of field trials over three sites suggest that the yields of wheat in the PALS system are similar to yields of wheat grown with fertilizer after cereal crops. Four sets of winter wheat results are summarized in Table 2 and show an overall average of 62.6 bushels/acre for unfertilized wheat after medic versus 60.3 bushels/acre for fertilized wheat after cereals. Winter wheat after two years of medic enjoyed a particularly strong yield advantage over conventional winter wheat in the 1985 Pullman trial where drought restricted yields. Also, yields of wheat which followed one year of medic and yields of wheat which followed cereals with fer-

Table 1. Assumptions for fertilizer and pesticide use for conventional management and PALS.

Crop	Fertilizer			Pesticides			
	N	P	S	Herbicide Trade Name	Rate Units/A	Insecticide or Fungicide Trade Name	Rate Units/A
CONVENTIONAL:							
winter wheat	130	30	25	Avenge Bronate	3.0 pts. 1.5 pts.	Benlate	1.5 lbs.
spring barley	80	0	0	Fargo Bronate	1.25 qts. 1.5 pts.		
winter wheat	130	30	25	Avenge Bronate	3.0 pts. 1.5 pts.	Benlate	1.5 lbs.
spring peas	0	0	0	Fargo Dinoseb- Amine	1.25 qts. 0.8 lbs.	Imidan	1.5 lbs.
PALS:							
peas + medic	0	0	0	Fargo Dinoseb- Amine	1.25 qts. 0.8 lbs.	Imidan	1.5 lbs.
medic	0	0	0	0	0	0	0
winter wheat	0	0	0	0	0	0	0

Table 2. Results from field trials which compared the yields of unfertilized cereals following cereals, fertilized cereals following cereals, and unfertilized cereals following medic.

Following Crop	Location	Harvest Year	Preceding Crop		
			Cereals		1 year Medic
			Unfertilized	Fertilized	2 years Medic
					Unfertilized
			bushels/acre		
Winter Wheat	Pullman	1984	36.5	62.1*	64.9
Winter Wheat	Pullman	1985	19.6	21.3*	—
Winter Wheat	Pullman	1984	55.0	86.3*	38.1
Winter Wheat	Davenport	1984	49.1	71.4*	77.4
Spring Wheat	Pullman	1984	14.3	19.4*	70.0
Spring Barley	Pullman	1985	—	34.0*	—
Average for Winter Wheat			40.1	60.3	61.4*

* Winter wheat followed spring barley and was fertilized with 150 lbs. of N/acre (Goldstein, 1986).

* Winter wheat followed winter wheat and was fertilized with 100 lbs. of N/acre (Goldstein, 1986).

* Winter wheat followed spring barley and was fertilized with 80 lbs. of N/acre (personal communication, Elizabeth Kirby, Washington State Univ., Dept. Agronomy and Soils).

* Winter wheat followed spring barley and was fertilized with 30 lbs. of N/acre (personal communication, Elizabeth Kirby, Washington State Univ., Dept. Agronomy and Soils).

* Spring wheat followed winter wheat and was fertilized with 120 lbs. of N/acre (Goldstein, unpublished data).

* Spring barley followed winter wheat and was fertilized with 80 lbs. of N/acre (Goldstein, unpublished data).

* The yields of winter wheat after medic were averages for wheat following one and two years of medic.

tilizer were similar, in the 1984 trials, where better growing conditions permitted higher yields. Not surprisingly, unfertilized wheat which followed cereals produced sharply lower yields than fertilized wheat which followed cereals or unfertilized wheat which followed medic. Based on the limited data in Table 2, it was assumed for this study that the two management systems produced identical yields of wheat but that PALS produced lower pea yields due to competition from the medic. Table 3 presents yield assumptions to be used for the economic analysis for the two management systems under both high and low yielding conditions.

Results of economic comparisons

The level and composition of variable costs of production for each crop in each rotation are summarized in Table 4. Costs were estimated by the use of the management assumptions in Table 1, current input prices, and representative tillage systems. Tables showing the timing and costs for each field operation, and detailed cost breakdowns by input categories for each crop, management system, and rotation are available in Goldstein (1986). The costs summarized

in Table 4 reflect a decline in N costs from 29 to 19 cents per pound between late 1985 when Goldstein's budgets were completed and the fall of 1986. Variable inputs in the budgets included seed, fertilizer, pesticides, custom services, machinery repairs, fuel, lubrication, crop insurance, overhead, interest on operating capital, and the farmer's labor. A budget was not calculated for the year of medic in PALS, because no operations were performed. However, two types of budgets were necessary for peas in the medic system; one for the first cycle of the rotation where medic was seeded with the peas and another in the second and third cycles where medic volunteered under seeded pea crops. Conventional wheat which followed barley had higher variable costs than wheat after peas, because it cost more to plow barley stubble than to disk pea residue.

Table 3. Yield assumptions for crops grown under conventional management and PALS.

Yield Level/System	Crop		
	Wheat (bu.)	Barley (tons)	Peas (lbs.)
	per acre		
High Yield			
Conventional	80	2	2000
PALS	80	—	1800
Low Yield			
Conventional	60	1.6	1600
PALS	60	—	1500

The net returns over variable costs are returns available for paying the fixed costs associated with depreciation, interest, taxes, housing, and insurance on machinery, plus interest and taxes on land. These fixed costs are not included in the current study as they are assumed to be identical for both systems. In practice, a farmer making a long-term transition to the PALS system might also reduce machinery fixed costs if reduced field operations permitted use of a smaller machinery complement or slower wearout for the existing complement. Any remainder after paying variable and fixed costs represents a return to the farmer's management and risk bearing. The gross returns, variable costs, and net returns for the two systems under the two yield conditions were calculated on a per-acre-of-rotation-per-year basis. The costs and returns of PALS were averaged over three cycles of the rotation (nine years). Average net returns for the conventional wheat-barley-wheat-*pea* rotation (NR_c) were equal to: (1) $NR_c = [2P_wY_w + P_bY_b + P_pY_p - (C_w + C_b + C_p + C_m)]/4$ where P and Y stand for price and yield, respectively, C stands for annual production costs, and the w, b, p, and m subscripts attached to P, Y, and C stand for winter wheat after peas or barley, winter wheat after peas, winter wheat after barley, spring barley, and spring peas, respectively. For PALS, returns for the pea + medic-wheat-rotation (NR_m) were equal to: (2) $NR_m = [P_pY_p + O + P_wY_w - (C_p + O + C_m)]/3$ where C_p was derived by averaging the costs for growing peas with and without the seeding of medic for the three cycles of the rotation.

Estimated annual variable costs per acre of rotation for conventional man-

Table 4. Composition of variable costs (\$/acre of rotation/year) for conventional management and PALS.

Cost Category System	Costs	Percent of System Total
Fertilizers and Pesticides (application and product)		
Conventional	72.52	56.0
PALS	15.00	26.4
Field Operations (tillage, planting and harvesting)		
Conventional	45.44	35.1
PALS	35.00	61.6
Overhead and Crop Insurance		
Conventional	11.44	8.9
PALS	6.82	12.0
Total		
Conventional	129.40	100.0
PALS	56.82	100.0

Table 5. Market prices and government target prices for commodities in 1986.

Price Source	Barley	Wheat	Peas
Average Market	\$ 70.00/ton	\$2.40/bushel	\$ 0.09/lb.
Government Target	108.00/ton	4.38/bushel	—

agement (\$129.40/acre/year) were more than double those of PALS (\$56.82/acre/year). The composition of costs also differed markedly between the two management systems. In Table 4, the variable costs were partitioned into the cost of chemicals (fertilizers, pesticides, and their application), the cost of other field operations, and the cost of overhead and crop insurance. For conventional management, the costs associated with chemicals (\$72.52/acre/year) were 4.8 times higher than those for PALS (\$15/acre/year). The conventional field operation costs also exceeded those for PALS by \$10.44/acre/year. This difference was due primarily to the absence of any operations in the second year of medic in the PALS rotation. Clearly, chemical inputs dominate variable production costs for modern cereal-intensive rotations in the Palouse.

To better examine the influence of current government programs, which couple payments to output of cereals, on the relative profitability of the two systems, an analysis was conducted by the use of both 1986 target prices and local market prices for wheat and barley. The wide gap between target prices and market prices, as shown in Table 5, reflects the depressed market and the relatively high government supports for cereal grains in 1986. The wheat target price, for example, exceeds the market price

by \$1.98/bushel or 83 percent. Dry peas are only sold for market prices because they are not included in government commodity programs.

Table 6 compares the profitability (net returns over variable costs) of the conventional and PALS rotations for alternative yield and price assumptions. To simplify the relationship of the net returns in Table 5 to the yields, prices, and variable costs reported in Tables 3-5, we ignore the costs of set-aside in the target price scenario. This is a conservative simplification since it reduces the relative profitability of PALS. It is likely that the year of unharvested medic in PALS would qualify as set-aside, but part of the wheat, barley, or pea acreage would have to be set-aside in the conventional rotation.

The conventional system had considerably higher gross returns than PALS

(\$274 versus \$171, under high yielding conditions and target prices) because crops were harvested every year in the conventional system. The government target prices markedly increased gross returns for participants in commodity programs for both systems, but especially for the intensive conventional system. However, when high yields and market prices are assumed, PALS produced \$14.59/acre/year more profit than conventional management. The contrast was even greater under the low yielding conditions and market prices where the conventional management system netted only \$6.60, while PALS netted \$36.18, an advantage of almost \$30. Assuming target prices and high yielding conditions, conventional management produced net returns of \$144.80/acre/year, which was \$30.82/acre/year more than for PALS. Under low yield and target prices, conventional net returns exceeded those for PALS by only \$5.42 (\$81.20 versus \$75.78). In only one of the four scenarios examined, that for current target grain prices and high yielding conditions, did the conventional system generate markedly higher net returns than PALS.

The net returns for the different management practices are linearly influenced by the price of wheat. Assuming market prices for barley and peas would not vary with the wheat price, and by inserting the appropriate yield levels and variable costs into equations (1) and (2) we derived the following equations for annual net returns/acre as a function of wheat price assuming high yield (NR_{CH} and NR_{ALH}) and low yield (NR_{CL} and NR_{ALL}) conditions.

Conventional management: high yielding conditions:

Table 6. Gross returns, variable costs, and net returns for conventional management and PALS under high and low yielding conditions and under 1986 market and target prices.

Yield Level/ System	1986 Market Prices			1986 Govt. Target Prices		
	Gross Returns	Variable Costs	Net Returns	Gross Returns	Variable Costs	Net Returns
\$/acre of rotation/year						
High Yield						
Conventional	176.00	129.40	46.60	274.20	129.40	144.80
PALS	118.00	56.82	61.18	170.80	56.82	113.98
Low Yield						
Conventional	136.00	129.40	6.60	210.60	129.40	81.20
PALS	93.00	56.82	36.18	132.60	56.82	75.78

$$NR_{CH} = P_w(40) - 49.40$$

low yielding conditions:

$$NR_{CL} = P_w(30) - 65.40$$

PALS management: high yielding conditions:

$$NR_{AH} = P_w(26.67) - 2.81$$

low yielding conditions:

$$NR_{AL} = P_w(20.00) - 11.81$$

As before, P_w signifies the price of wheat. Under the high yielding conditions, the break-even price of wheat where conventional and PALS management had the same returns) was \$3.50; above that price, the conventional system was more profitable, and below that price it was less profitable. Under the low yielding conditions, the break-even price of wheat was \$5.36; above that price, the conventional system was more profitable, and below that price it was less profitable. Net returns for the different systems are shown for a range of different wheat prices in Table 7. These results show that lower wheat prices, such as current market prices, strongly favor the low-input PALS management system.

While the sensitivity analysis in Table 7 plausibly indicates that lower wheat prices favor the less cereal-intensive rotation, readers are cautioned that these estimates do not reflect the full range of price adjustments that might accompany a fall in wheat prices. Prices for pesticides, nitrogen fertilizer, and machinery used for wheat production might also fall below the levels assumed in this analysis. Our use of the exceptionally low price of nitrogen fertilizer prevailing during 1986, due largely to abundant foreign supplies, might have captured at least part of such a corollary reduction in input prices. Also, prices of barley and wheat tend to rise and fall together,

in contrast to the constant barley price assumed in this analysis.

Conclusions and further research needs

Our budgeting analysis revealed that the conventional system gave a pronounced economic advantage only with a combination of relatively high support prices and high yielding conditions. Under current market price conditions, PALS was more profitable than conventional management for both high and low yielding conditions. Price sensitivity analysis showed that PALS profit advantage over the conventional system grew as wheat prices fell below \$3.50/bushel. Furthermore, PALS slashed annual production costs by 56 percent. This would reduce the financial risk borne by farmers and could make it easier for them to obtain financing. Crop failures would impose lower financial losses under a low-input system than under chemical-intensive systems.

Though PALS appears to have potential for increasing profits under low-yielding or low-price conditions, it should be emphasized that PALS is an experimental system. These preliminary results are not a final recommendation, but are meant to stimulate further research in PALS types of systems.

Most of the trials documented in Table 2 consist of results from wheat following only one year of medic. In the PALS system, wheat would follow two years of medic and yields could be expected to be higher due to more N fixed by the medic and more disruption of cereal diseases such as strawbreaker foot rot and Cephalosporium stripe. Furthermore, it is commonly assumed that,

under conventional management, wheat following peas yields somewhat higher than wheat following cereals, but we assumed the yields were the same. We have no data which compares fertilized wheat following harvested peas with unfertilized wheat following medic. However, recent trials which compared fertilized wheat after harvested peas versus wheat after green manures showed similar results to those shown with medic and cereal rotations. Wheat which followed plowed-under chickpeas (*Cicer arietinum* L.), peas, or lupines (*Lupinus albus* L.) yielded 1.18-2.35 times higher than fertilized (100 lbs. of N/acre) wheat which followed harvested chickpeas, peas, or lupines (Goldstein 1986). These results occurred on a drought year (1985) and may not be representative. However, in another study, wheat which followed plowed-under biennial red clover and received no fertilizer yielded 77 bushels/acre while fertilized wheat which was direct seeded after a harvested crop of peas yielded 60 bushels/acre (Bezdek et al., 1986).

It might be objected that the yields of wheat following medic reported in Table 2 were unfairly high due to residual-N from fertilization of previous cereal crops. However, the first two trials documented in Table 2 show considerable yield benefits due to medic on ground which had not been fertilized for three and four years before the wheat was grown. Future trials should investigate the long-term effects of medic on soil fertility. Short-term results indicate that medic increased the organic matter content of the soil relative to continuous cereal cropping (Goldstein, 1986).

Trials reported in Table 2 did not establish medic under crops of peas. However, experience from other trials indicates that black medic can be successfully established under a companion crop of peas (personal communication. A. G. Ogg, Jr., USDA Weed Scientist, Pullman, WA) and will volunteer back strong stands in spring crops (unpublished results). Nevertheless, more information about the revolunteering habits of black medic, the effects of companion crops and herbicides on medic, and weed and insect problems needs to be gathered before PALS can be safely

Table 7. Effect of wheat prices on net returns for conventional and PALS management systems under high and low yielding conditions when barley and pea prices are set at current market prices.

Price of Wheat	Conventional		PALS	
	High Yield	Low Yield	High Yield	Low Yield
	returns in \$/acre/year			
\$ 5.36	165.00	95.40	140.13	95.40
\$ 5.00	150.60	84.60	130.53	88.18
\$ 4.00	110.60	54.60	103.86	68.18
\$ 3.50	90.60	39.60	90.60	58.18
\$ 3.00	70.60	24.60	77.19	48.18
\$ 2.00	30.60	-5.40	50.52	28.18
\$ 1.00	-9.40	-35.40	23.85	8.18

recommended on a wide scale. There is a particular need for long-term trials which evaluate the capacity of PALS-type systems to provide adequate nitrogen supplies and effective weed control over repeated rotation cycles. If supplemental nitrogen or herbicide applications are necessary to sustain yields in PALS over repeated cycles, it would diminish its cost advantage. Nonetheless, a mixed PALS-conventional system may still be more profitable than current conventional systems under free market cereal prices.

Harrowing wheat in the spring may be a crucial component of weed control in PALS winter wheat and this technique needs more investigation. Inoculation of medic seed appears crucial in promoting the vigorous medic growth necessary to combat weeds. Besides black medic, other biennial legumes such as red clover or kidney vetch (*Athyllis vulneraria* L.) should be tested for suitability to PALS. Furthermore, the agronomic and financial effects of integrating livestock into the PALS system should be examined as black medic has a protein content similar to that of alfalfa and is used for grazing in Europe.

The economic analysis in this study confirms that an extensive farming system which substitutes legumes for fertilizers and pesticides is favored under an agricultural economy with lower grain prices. The rapidly emerging competitive strength of agricultural producers in Argentina, Brazil, Canada, Australia, western Europe, the centrally planned economies, and several Third World countries, suggests that world grain prices are not likely to rebound quickly from their currently low levels. As taxpayers in the United States grow unhappy with continuing large federal expenditures for price support payments and storage charges, U.S. growers might be increasingly forced to find lower cost production systems. Although the Food Security Act of 1985 provided for the gradual reduction of price and income supports, the 1986 farm programs are projected to cost taxpayers \$25 billion. These costs, concurrent with record federal deficits, may result in further pressures to reduce target prices. Such pressures may diminish government

subsidies which support intensive grain rotations, which in turn are sustained by heavy fertilizer and chemical use. In the long run, given the inelasticity of demand for small grains, reduced production via extensive systems like PALS could reduce surpluses, strengthen crop prices, and lower production costs. The conventional rotation assumed in this study (producing wheat two years out of four) results in 50 percent more wheat being produced than the PALS system.

Although we have not focused on broader societal benefits in this study of farm-level costs and returns, widespread transition to low-input legume-based rotations would also provide substantial environmental benefits. These include reduced soil erosion, abatement of pollution from agricultural chemicals, and increased wildlife habitat.

On the negative side, the wide-scale transition to low-chemical-input agricultural systems could reduce employment and incomes among input supply businesses in communities serving grain growing regions. However, the low production costs associated with the legume systems might make it easier for smaller scale entrants to get started in farming. If realized, such a trend might offset the population loss associated with input supply businesses. Furthermore, these systems could ensure a continuation of production under sustained low wheat prices in the face of increasing foreign competition and possibly declining price and income supports.

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Trees can help reclamation of salinized land

Ground water management with the aid of trees can help in the continued use or reclamation of salinized land, according to a report on the topic by David Bainbridge and Wesley Jarrell of the Dry Lands Research Institute at the University of California, Riverside. Salinization as a result of irrigation affects more than five million hectares in the western U.S., the authors say. High water tables and saline ground water complicate the situation, since salt depresses plant growth and the capillary rise of ground water can lead to increasing soil salinity.

China and Australia have had encouraging results with using trees to address these problems, the researchers say. Direct evapotranspiration of water by the tree reduces the irrigation needs of the crop by improving microclimatic conditions. Trees also reduce wind damage and keep ground water levels between the root zone of crops, reducing capillary action. The most suitable trees are those having high water use, good heat and salinity tolerance, and deep root systems to avoid competition with crops. Oak, mesquite, alder, willow, and cottonwood are good candidates.

Exhibit C

The transition to organic agriculture: A multi-year simulation model of a Pennsylvania farm

Stephan Dabbert and Patrick Madden

Abstract. Prior research has shown that an established organic farm can be as profitable as a conventional farm under certain circumstances. However, organic farming systems often require a transition period before they are fully established after a change-over from conventional farming. Yields may decrease and recover only slowly during this transition period and less profitable crop rotations may be required to establish an organic system. Previous studies have ignored the income trend during the transition phase, and comparisons of organic and conventional farms have been faulted for lack of similarity in management and other resources. The study reported here used a multi-year simulation model to investigate the trend in income of a 117-hectare crop-livestock farm in Pennsylvania (called the Kutztown farm) during this transition process. A baseline model of the Kutztown farm under conventional management (CONB) was found to earn an income (returns over cash operating cost) of \$61,900. The transitional models developed were an upper-yield case assuming no yield decline during the transition (TRANS) and a lower-yield case assuming severe yield decline in the first year after the change-over from conventional management and a subsequent linear recovery of yields over a three-year period (TRANS-L). Income was found to be severely depressed by a yield decline during the transitional phase. The first year of TRANS-L resulted in a 43% reduction in income. The scenario without a yield decline (TRANS) resulted in a 13% lower income compared to the baseline (CONB) model. Both transitional models led to an established organic situation with stable organic yields and an income of \$37,400 or 7% less than under conventional management. It was found to be more profitable to sell the crops and purchase manure than to feed the crops to beef in a fattening enterprise. At small herd sizes (100 head) the reduction in income caused by the feeding operation was moderate (\$1,300), but with a larger operation (213 head) the income sacrifice increased tenfold.

Several studies (summarized by Hodges, 1978; Vogtmann, 1984) indicate that farms using alternative technologies, such as those called organic, regenerative, or sustainable, can be as profitable as conventional farms under certain circumstances. However, very few U.S. farms use methods that would be characterized as "organic" according to a widely used definition (USDA, 1990: 9). One reason more farmers have not adopted organic methods is their expectation that yields and profits would be substantially reduced, at least during the transition phase, and perhaps permanently. In practice, some organic

farmers have found that their yields have declined, but their costs have also decreased, leaving profits unchanged or sometimes increased. In other circumstances, reduced yield leads to an even greater proportional drop in income.

Nevertheless, anecdotal "success stories" do not constitute a solid base on which farmers could plan the future of their operations. Studies comparing actual operating organic farms with conventional farms have been criticized as lacking adequate statistical controls so that differences could not be attributed solely to organic farming methods. There is very little carefully measured data on the costs, yields, and overall performance of organic farms. The present study uses an unusually complete body of data collected by the Rodale Research

Center near Kutztown, Penn., on an adjacent farm that has been operated for several years with methods that are generally considered "organic." It illustrates how such data may be analyzed by use of a multi-year simulation model to estimate the trend in income as a farm enters a transition from chemical-intensive to organic methods.

Definition and description of the transition process

A farm's profits during the transition from chemical-intensive to organic farming methods are determined by a combination of five kinds of effects: rotation adjustment, biological transition, price, learning, and a perennial effect.

The rotation adjustment effect

The rotation adjustment effect is the reduction in income caused by selection of crops necessary to establish an organic farm plan. Crop rotations are essential to organic farming. The reproduction cycles of various insects, disease organisms, weeds, and other pests are interrupted when different crops are grown in a particular sequence. In instances where the conventional crop mix was rather intensive and the transition involves introduction of less profitable crops such as a sod crop or small grain in place of continuous corn, for example, the financial losses in the early years of the transition can be severe. In other situations, such as starting from a conventional farming scenario featuring a diverse rotation including legumes, the rotation adjustment effect on profits may be minimal or non-existent.

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The biological transition effect

The biological transition effect refers to natural processes that tend to reduce profits by reducing yields or increasing costs as a result of shifting from dependence on chemicals to organic methods. For instance, the USDA report (1980: 16) notes:

"Farmers who had previously farmed conventionally reported that crop yields were often markedly reduced during the first several years following the shift from chemical to organic farming. During this transition, severe weed infestations often occurred and crops were sometimes difficult to establish. Occasionally the crops showed symptoms of nutrient deficiency. Farmers said that after the third or fourth year, as the crop rotations became established, yields began to increase and eventually equalled the yields they had obtained chemically."

Severity of the biological transition effect varies according to climatic and soil properties, cropping history, combinations of chemicals used, and transition strategy employed. For example, adoption of organic methods may require additional costs for practices such as cultivation to control weeds. Establishment of populations of biological pest control organisms may take several growing seasons, especially following a long history of chemical applications that has eliminated many of the natural predators (such as specific kinds of insects, mites, nematodes, or bacteria) and other beneficial forms of life such as earthworms and birds. Positive biological impacts on profits may occur as a result of practices such as the substitution of leguminous nitrogen for purchased fertilizers and reliance on biological controls in place of chemical pesticides. These positive biological effects usually do not occur until after a transition period. The length of the biological transition phase varies depending on field conditions, often ranging from three to six years (Koepf et al., 1976; USDA, 1980). Negative biological effects on profits can be minimized through a gradual transition featuring phased reductions in chemical use com-

bined with introduction of beneficial predators and removal of conditions and substances harmful to these organisms. Many authors (Madden, 1984; Oelhof, 1978; Thumm, 1984; Zerger, 1984) advocate a gradual change-over from chemical-intensive to organic methods. Preuschen (1985) proposes that one-third of the farm be changed over at one time. Some farmers experience no adverse biological effects during the transition; yields may remain high (and in rare instances actually increase) and costs may not increase (in some instances actually decrease) with the adoption of organic methods.

The price effect

During the transition, the farm's profits may be affected by changes in the prices of its commodities. The price effect may be positive, as in situations where "organic" produce commands a premium price. Or the effect may be negative as in situations where insect damage reduces the grade of fresh fruits or vegetables. In other instances, the price effect may be nonexistent—when commodities are sold in conventional markets at regular prices.

The learning effect

The learning effect is the reduction in income related to the farmer's lack of experience or information regarding organic methods. Where the organic technology is complex and risky and the farmer is inexperienced, the learning impact on profits can be formidable. But where the organic technology is relatively easy to adopt, the learning effect may be small or negligible.

Several European authors have addressed the question of how to plan a transition (Aubert, 1981; Grosch, 1985; Koepf et al., 1976; Preuschen, 1985). They all stress the importance of improving the condition of the soil, with crop rotation and manure treatment seen as keys to achieving that goal.

Koepf et al. (1976: 195) suggest that the planning process for a transition should begin with a thorough inventory of "everything on the farm including all

the given conditions for production," namely:

1. the given natural conditions
2. the interest and particular skills of the farmer
3. marketing facilities
4. economic aims, i.e., the necessary net income and also the improvement of the farm and its lasting productivity.

Several theses from Gesamthochschule Kassel, Federal Republic of Germany, have developed plans for a transition on specific existing German farms (Grimm, 1984; Kulow, 1984; Scharf, 1981/1982; Zerger, 1984). Clearly the process of planning a transition is extremely complex, involving a learning process for the farmer who often has to deal with unfamiliar production techniques and to adapt them to his or her specific circumstances. Advice of experts can be invaluable during the transition. Aubert (1981), Grosch (1985), and Preuschen (1985) agree that the help of other organic farmers and an informed extension service (where available) can be very valuable. Lack of technical information and advice regarding organic methods can be a major barrier to adoption of organic systems by significantly increasing the farmer's apprehension and uncertainty regarding the financial outcome of the transition.

The perennial effect

Transcending the effects of rotation adjustment, biological transition, price, and learning is a long-term or perennial effect. That is, after the biological and managerial difficulties are overcome and the rotation is established, and apart from the effects of differential prices for organic commodities, there may be a long term effect on the profit of the farm. An important element of the perennial effect is the change in profits caused by changing the mix of crops grown and livestock enterprises produced on an established organic farm as compared with conventional farm management. This perennial effect may be either positive or negative, depending on whether organic farming is inherently advantageous or not from the standpoint of year-to-year profitability of the farm.

The present study emphasizes the ro-

tational effect of the transition. The biological effect is treated by formulating two alternative scenarios regarding yield changes during the transition; input costs during the transition are assumed to be the same as in established organic farming, and conventional market prices for farm commodities are used in computing net returns. Differences in the management level are eliminated by using production data intended to reflect equally competent and knowledgeable management in both the organic and conventional options. The perennial effect is illustrated.

The Kutztown farm

The farm modeled in this study is a mixed crop and livestock farm located near Kutztown in Berks County, Penn. The 117-hectare farm mainly produces feed for a beef finishing operation. The beef feeder stock are purchased and the finished cattle are sold in conventional markets. The farmer uses crop production methods compatible with the USDA definition of organic farming (USDA, 1980: 9), but the beef feeding operation is managed more conventionally. This study deals only with the crop enterprises. The Rodale Research Center's study of this farm from 1978-1982 (Culik et al., 1983) provided most of our data.

Most of the farm's land (88 out of 117 hectares) is rented from the Rodale Research Center. By rental agreement the farmer is not allowed to use chemical pesticides or herbicides on this part of the land. Except for a small amount of starter fertilizer on corn, all the nutrients are supplied by manure application and a rotation that includes legumes. Weeds on the Rodale land are controlled by means of mechanical cultivation and rotation. On the farmer's other 29 hectares of land, reduced rates of herbicides are used for weed control in corn and soybeans. Strip-cropping is used for erosion control. Tillage is with moldboard plow.

Crop rotation is the major way of maintaining productivity; the crop mix consists of about one-third row crops (corn or soybeans), one-third small

grains (wheat, barley, oats and rye), and one-third hay (alfalfa or timothy/red clover). The yields of most crops are somewhat higher than state and county averages (Culik et al., 1983: 36-41).

Livestock on the farm are primarily beef that are purchased at approximately 300 kilograms and fed for 200 to 240 days. The average herd size between 1978 and 1982 was 213 head. A few chickens and hogs are also produced on the farm, in part for home consumption.

To represent variations in land productivity found on the farm, the land was divided into three categories: Land-1 (35 hectares), Land-2 (29 hectares), and Land-3 (53 hectares). Land-1 is the most productive land, Land-3 has the steepest slope and is the least productive. Different yield coefficients were assigned to different land classes, based on crop history and yield data collected by the Rodale Research Center.

The simulation models

Key assumptions

Two assumptions were made in this study regarding the biological transition effect. One was no reduction in yield and the other was a 30% reduction in the first year of transition followed by a linear recovery trajectory in three years. It might be argued that if the farm is operated by a very skillful manager, the yields under conventional management would be higher than the organic yields. The fact that the Kutztown farm's yields exceed county and state averages suggest that the converse argument could also be made. However, since there is no objective way to compare the farm's soil productivity with that of the county average or to select comparable yields for the different management systems on this farm, the present study initially assumed equal yields, except for hay crops. Organic alfalfa is assumed to be established with a nurse crop (a small grain), with no hay cut in the established year. After the establishment year, organic alfalfa is assumed to yield 7.5 metric tons of hay per hectare for three years of full

stand. Conventional alfalfa is assumed to be established without a nurse crop, yielding 3.75 metric tons of hay per hectare in the establishment year. It is then assumed to stand for two years, yielding 7.5 metric tons per hectare per year. A similar reasoning applies for timothy/clover.

Because the goal in this study was to maximize the farm's income during the transition, the financial impact of keeping different herd sizes (including no beef at all) was investigated. It was decided that the size of the beef fattening enterprise in the transition models would be set at the most profitable level, even if that meant eliminating beef entirely. To some observers, elimination of the beef enterprise from the farm plan may seem antithetical to the concept of organic farming. However, the purpose of this study was to determine the most profitable way this specific farm could be organized during a transition from conventional to organic methods. Many organic farms have no livestock, relying totally on legumes and purchased manure as their sources of nitrogen. Clearly this procedure is not incompatible with the USDA definition of organic farming. It would be unrealistic, therefore, to require the farm plan to include a beef enterprise as a source of manure at the expense of a large reduction in profit as compared with a farm plan in which the manure is purchased and the crops are sold rather than fed to an on-farm beef enterprise.

It was assumed that all crops and beef were sold into conventional markets and that chicken manure could be purchased to provide nutrients in the organic options if necessary. The enterprise budgets used in this study are based on Culik et al. (1983: 70 ff.) and on Domanico (1985).

Baseline model of farm under conventional management (CONB)

The baseline condition of the farm was simulated assuming conventional farming methods, a model called CONB. This model permits, but does not require, that beef cattle be raised on the farm. Of course many conventional

farmers produce legumes, raise livestock, and apply manure to their fields. For the purpose of the present study, the conventional version is not required to do so; rather the most profitable enterprise combination is chosen so the results of the conventional and organic options would reflect comparable management skills and efficiency in operation. The constraints on the conventional crop rotations are minimal. Continuous corn is allowed on Land-1 and Land-2; continuous alfalfa is not permitted because in this location pest problems reduce yields after three years. Half of the more erodible Land-3 must be in an erosion-controlling hay crop. No soybeans are allowed on Land-3 because of the high erosion associated with this crop in steep fields.

The CONB model was constructed to answer two questions: (1) Would a profit-maximizing plan using conventional technology include any perennial crop stands (i.e. legumes) that would carry over into the first and second year of a transition? (2) Will there be a nitrogen carry-over from legume crops into the transitional period?

Construction of the transition models, TRANS and TRANS-L

The transition models include a simplified connection between the years to represent the effects of legumes. Legumes not only contribute nitrogen; they also contribute to the positive effect by improving soil tilth, suppressing weeds, and interrupting the reproductive cycles of various pests and disease organisms (Kilkenny, 1984). The nitrogen carry-over from legumes is often thought to be more important than the rotation effect. In the transition models, the nitrogen produced by legumes in one year is transferred as an input into the next year to fulfill nitrogen requirements of non-legume crops. Both the amount of nitrogen transferred and the amount needed were based on figures in the Penn State Agronomy Guide 1985-86, which is based on extensive experimental plot research in various locations around the state.

The other source of nitrogen on the farm is manure that can be bought or

produced by on-farm livestock. In analyzing scenarios in which beef cattle are eliminated from the farm, the simulation model purchases manure as required for the farm. The nitrogen requirement constraints were introduced for every year and for every land class.

The transition models include similar requirements for potassium and phosphorus. The nutrient requirements differ for the different land classes according to the yield. The macro-nutrients (N, P, and K) can be obtained from four sources: (1) carry-over from legumes (N only); (2) purchased chicken manure; (3) manure from the cattle on the farm (which supplied N, P, and K in a different proportion and quantity compared to chicken manure); and (4) commercial fertilizer for P and K. Organic farmers prefer commercial forms of P and K that are not highly soluble (e.g., rock phosphates). Because of lack of data on the prices of such fertilizers, the same prices per pound of P and K as used by Domanico (1985) for commercial potassium and phosphorus fertilizers were assumed.

As a preliminary step in the analysis, an extreme approach to the transition was taken in an exploratory model (EXPL). It assumed that the change-over occurred throughout the whole farm in one year. As was pointed out in the literature review, this is not recommended. However, the results of the EXPL model magnified the problems and thus facilitated the construction of the transitional models; the results of EXPL were modified to form a more cautious (and realistic) gradual transition.

Two versions of the model were then developed: The first one (TRANS) incorporates an optimistic assumption that the crop yields during the transition are the same as in conventional and established organic farming. To account for the decreased yields reported by many farmers during the transition, a second version of the model was constructed (TRANS-L). TRANS-L differs from TRANS in several ways. The yields of all crops grown in the first three years are multiplied by yield adjustment factors. For all the other years the yields of TRANS and TRANS-L are equal.

For year one, the assumed yield adjustment factor is 0.7, for year two it is 0.8, and for year three it is 0.9. These factors are derived from Grosch's (1985) statement that in an unfortunate situation the yields during the transition could drop to 70% of the conventional yield. The linear recovery was assumed by Oelhaef (1978).

Some evidence (including soybean yields of the Rodale Research Center Conversion Experiment [Dabbert, 1986]) suggests legume yields may not decline as much as non-legume yields. In fact, alfalfa and soybean yields may not decline at all. The authors considered using yield data from the Rodale Conversion Experiment (Culik et al., 1983) as the basis for yield reduction assumptions. This approach was not followed because of the high variability of the yields and the limitations in the experimental design (Dabbert, 1986: 19-22). Rather, in the interest of providing a clear lower limit comparison, the TRANS-L simulation model assumes that these yield adjustment factors are the same for all crops, including legumes.

Since the amount of nitrogen fixation occurring in a legume crop is generally thought to be proportional to the biomass of the crop, the nitrogen furnished by a legume with decreased yield (i.e., in the first three years of TRANS-L) was also multiplied by the appropriate yield adjustment factor. The nitrogen needs of all crops were conservatively assumed to be the same for all the years in the TRANS-L and TRANS models.

To find the optimum (most profitable) crop rotations for the farm under established organic management for each land class, several preliminary versions of TRANS and TRANS-L were run without any requiring any organic crop rotations. Thus the most profitable crop on every land class was found. The shadow-prices (profit foregone) due to omitting crops from the simulation solution revealed the approximate order of profitability of these omitted crops. With this knowledge, the requirements of the organic systems were introduced. Several feasible organic crop rotations were formulated for each land class. These were then compared through the mod-

el's profit maximization process (linear programming) to determine the most profitable crop rotation consistent with the organic farming definition. These rotations were then entered into the transition models TRANS and TRANS-L starting from year four, the beginning of the established organic crop rotation in the model. The profits of the organic systems continue to be reduced in years four and five, because the nitrogen cycle using the legumes is only fully established in year six and subsequent years.

For the first three years of the model TRANS, the crop mix on the three different land classes was selected using good agronomic practices, while at the same time profit was maximized. For instance the proportion of organic corn following conventional corn was kept as low as possible to reduce pest problems.

The average cost of buying chicken manure during the study period was estimated to be \$12.86 per metric ton, based on the price paid by the Kutztown farm operator, including the cost of hauling and spreading the manure. This study disregards any effects of manure other than the macro nutrients supplied, such as increase in organic matter, micro-nutrients provided, improvement of soil structure, weed seeds introduced, or salinity. Also the effect of a slow decay of manure that contributes nitrogen in the second and subsequent years after the application was not taken into account. These omissions may understate the profitability of organic systems.

Eight years of the model are presented. This includes the three-year transition period, two intermediate years while the nitrogen cycle and income are stabilizing, and a three-year period of stabilized income. Subsequent years of the model would be identical to these last three years in all respects.

Results

Conventional baseline model (CONB)

The model CONB results in an income of \$61,900 (Table 1), with "in-

come" in this study representing returns over cash operating costs and not the income of the farm families. To reduce this to net farm income, the depreciation costs, net reductions in inventory, and overhead costs such as interest, taxes, insurance and rent must be subtracted. Family income includes net farm income plus off-farm income of various family members.

In the CONB model results, all of Land-1 and Land-2 is used for continuous corn, the most profitable crop in these land classes. On Land-3 corn is grown up to the upper limit (50% or 26.5 hectares); the other half is in alfalfa. A third of the total baseline alfalfa acreage (8.8 hectares) is in the first year of the stand on Land-3; another third is in the second year of the stand, and the remainder is in the third year of the full stand. These legume stands were carried into the first year of both of the transitional models. That means there was a nitrogen carry-over from the alfalfa grown in the baseline model CONB to the transition models only on Land-3, but none for Land-1 or Land-2.

Transitional model with no yield reduction (TRANS)

In the transitional model TRANS, the most profitable organic crop rotation on Land-1 was found to be a wheat-soybeans-corn rotation (WHT-SB-C). On Land-2 and Land-3 the most profitable organic rotation was WHT-A-A-A-C-C, or wheat followed by three years of alfalfa and two years of corn. The resulting

income is reported in Table 1.

On Land-1 the optimum organic rotation (WHT-SB-C) for year one of the transition continues to be the optimal solution for subsequent years. One third of the land class (7.7 hectares) is grown in each crop. Since it is more profitable to buy nitrogen as chicken manure than to produce alfalfa on Land-1, the need for manure on Land-1 is 6.9 metric tons of chicken manure per hectare in the first year, and 5.6 metric tons per hectare in subsequent years (Table 2). On Land-2 the first six years show a general downward trend in the manure required, from 6.9 metric tons per hectare to 2.3 metric tons per hectare (Table 2). The only irregularity in this trend is year two, in which only 2.5 metric tons per hectare are bought. This is a result of the high proportion of soybeans in the first year of transition crop mix. The need for chicken manure for the whole farm drops by approximately a third from year one (531 metric tons) to the established organic situation in year six (348 metric tons). The total expenditure for nutrients drops by approximately 15% from the first year (\$10,917) to the established organic expenditure (\$9,309). Alfalfa has to be established in a small grain on Land-2; wheat is the most profitable small grain nurse crop. A third of the total area to be allocated to alfalfa on Land-2 is to be established in year one, another third in year two, and the remainder in year three. In the establishment year there is a wheat crop but no alfalfa harvest. By year four the total alfalfa area reaches its maximum for Land-2 of 14.5 hectares. This is 50% of Land-2, the amount of alfalfa deter-

Table 1 Income of TRANS and TRANS-L Losses Compared to Established Organic, and Losses Due to Rotational and Biological Transition Effects, by Year.

Year	Income of TRANS	Income of TRANS-L	Losses Due to:	
			Rotation Adjustment Effect	Biological Transition Effect
0 (CONB)	\$61,900	\$61,900	—	—
1	54,000	35,000	\$3,400	\$19,000
2	56,700	44,100	700	12,600
3	57,600	48,700	-200	8,900
4	56,400	56,200	1,000	200
5	57,400	57,300	0	100
6	57,400	57,400	0	0
7	57,400	57,400	0	0
8	57,400	57,400	0	0

Table 2. Chicken Manure Bought for TRANS by Land Class and Year (metric tons)

Year	Land-1		Land-2		Land-3		Whole Farm	
	Total Amount	Pt/ Hectare	Total Amount	Pt/ Hectare	Total Amount	Pt/ Hectare	Total Amount	Cost
1	244	6.9	203	6.9	84	1.6	532	\$6640
2	197	5.6	72	2.3	84	1.6	353	4540
3	198	5.6	141	4.8	84	1.6	422	3430
4	197	5.6	91	3.1	84	1.6	372	4790
5	197	5.6	72	2.3	84	1.6	353	4540
6	197	5.6	67	2.3	84	1.6	348	4480
7	197	5.6	67	2.3	84	1.6	348	4480
8	197	5.6	67	2.3	84	1.6	348	4480

mined in the optimum crop mix of the organic rotation (Figure 1).

On Land-3, the most profitable rotation throughout the transition turned out to be WHT-A-A-A-C-C. The average need for chicken manure on Land-3 is 1.6 metric tons per hectare in every year. In actual practice, the farmer would apply a larger amount in fewer years, preferably on the wheat and corn.

Transitional model with reduced yields (TRANS-L)

For TRANS-L (the model version with reduced yields and a linear recovery during the transition in years 1 to 3) the same crop mix was found to be the optimum as in TRANS. However, there are large income differences between the two models in the first three years (Table 1). Reduced yields cause a greater proportionate reduction in income.

TRANS-L also differs from TRANS in some of its manure needs. In TRANS-

L, less nitrogen was furnished by legumes because the yields of biomass are lower. However, the requirements of the other crops were conservatively assumed to be the same as in TRANS in spite of the decreased yields during the transition years. This results in a slightly higher amount of manure purchased in year two through five for TRANS-L as compared to TRANS.

As increasing herd sizes are incorporated into the TRANS model, income declines. Expanding herd size up to 100 head reduces income by only \$1,300, whereas a 213 head beef enterprise reduces income by \$13,100 as compared with selling all the crops and buying manure.

A yield loss of 30%, as assumed in the first year of TRANS-L, has a serious financial impact. The trend in income from TRANS-L shows how income is reduced by the combination of the rotation adjustment effect and the biological transition effect, while TRANS (assuming no yield decline) shows only the reductions from the rotation adjust-

ment effect. Because the two models represent the same crop rotations, the biological effect (Table 2, column 5) is estimated by subtracting the income of TRANS-L from the income of TRANS in respective years. The biological transition effect declined from \$19,000 in year 1 to zero in year 6. The "rotation adjustment effect" in a given year is estimated by subtracting that year's income of the TRANS model from the income of the TRANS model in year six (column 4). This effect declined from \$3,400 in year 1 to zero in year 5.

The "perennial effect" is calculated as the income from one of the transitional models after the organic rotation has been established, such as in year 6, minus the income from the conventional model (Table 1, year zero). Given the assumptions and resource endowments used in this study, the perennial effect is estimated as minus \$4,500, or a 7.3% reduction in income as compared with conventional operation.

Figure 1. Allocation of Crops Among Six Equal Size Segments on Land-2 and Resulting Crop Rotations

Field No. ¹	Conventional Operation, Year		Adjustment Phase, year		Intermediate Phase, year		Established Phase, year	
	0	1	2	3	4	5	6	7
1	CG ²	CG	WHT	ALF1	ALF2	ALF3	CG	CG
2	CG	SB	CG	WHT	ALF1	ALF2	ALF3	CG
3	CG	WHT	SB	CG	WHT	ALF1	ALF2	ALF3
4	CG	WHT	SB	CG	CG	WHT	ALF1	ALF2
5	CG	WHT	SB	CG	SB	CG	WHT	ALF1
6	CG	WHT	ALF1	ALF2	ALF3	CG	CG	WHT

¹ Each "field" is about 5 hectares.

² CG = Corn Grain

SB = Soybeans

WHT = Wheat, Nurse Crop for Alfalfa

ALF1 = Alfalfa in the First Year of the Full Stand

ALF2 = Alfalfa in the Second Year of the Full Stand

ALF3 = Alfalfa in the Third Year of the Full Stand

Discussion and conclusions

Modelling the transition process

We have demonstrated the use of a multi-year simulation model to predict the income effect of a transition from conventional to organic farming. This analytical method has several advantages, particularly in its capacity to eliminate the confounding effects of differences in management ability.

The empirical findings of this study illustrate the common knowledge that a transition to organic farming can cause severe short-term financial losses for a farm, but the magnitude of these losses (as compared to established organic farming or a continued conventional operation) can vary widely under different yield reduction scenarios (Figure 2). Losses due to the rotation-adjustment effect are most severe in a phase of re-organization before the crop rotations become fully established. During a transition which involves a shift to a less profitable rotation, these losses are unavoidable. The established organic rotation is reached on all land classes in year four, but the rotational effect on income is not completely overcome until year six of the models, when the legumes begin providing their maximum contribution to the farm's nitrogen supply. In year four and year five the nitrogen supply from the legumes is not yet fully established.

Soil erosion is not limited in this study; the conventional option earns a 7.3% higher profit, while incurring nearly twice as much soil erosion as the established organic farming option. Domanico et al. (1986) have shown that if the soil erosion on this farm was limited to an average of 5 tons per acre or less, organic farming methods would produce a higher income than conventional farming. For example, when soil erosion is limited to 3 tons per acre, the organic option earns 11% higher income than conventional. An even greater income differential occurs when overseeding of legumes into corn is included as a management strategy.

The price effect and learning effect are

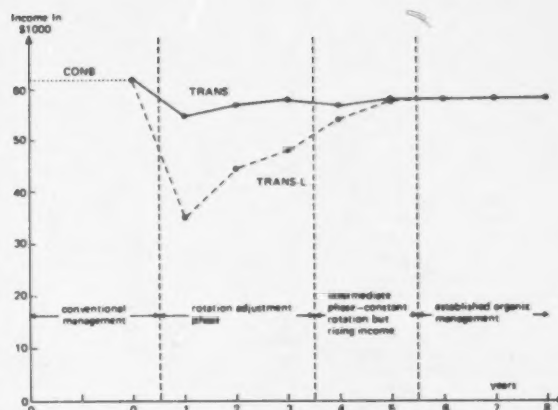


Figure 2: Income of TRANS, TRANS-L, and CONB.

not applicable in this study, because it was assumed that all products were sold into conventional markets with no price differential for organic production, and that the farmer was fully capable of implementing organic methods.

It is clear that yield loss is a major factor that influences the financial viability of a farm during the transition. Unfortunately there are no clear-cut rules for maintaining a profitable yield level. Certainly, nutrient supply is a factor; for that reason the models required an adequate supply of nitrogen, phosphorus, and potassium. Organic farmers cope with severe weed problems by additional mechanical cultivations and a diverse crop rotation. The crop rotation is also the key to avoiding pest and disease problems. If major pest or disease problems did occur during the transition phase, a practical organic farmer would probably use some chemicals—preferably the minimum effective dose of the least harmful pesticide. This emergency measure is compatible with the USDA definition of organic farming. There is some evidence (Dabbert, 1986; Girsch, 1985) that the yield reduction factors are different for different crops. Since no exact data exist for Pennsylvania, a conservative approach was taken: equal

yield reduction factors for all crops have been assumed. If yields for legumes did not decline as much as those for other crops, legumes would become relatively more profitable, and would therefore tend to take the place of non-legumes in the rotations. Manure purchases would be reduced and incomes would increase as compared with those reported from TRANS-L.

CONB represents an extreme approach to conventional farming. This approach results in continuous corn on two land classes and is associated with high erosion (compare Domanico, 1985). However, it illustrates a radical change in the crop mix during the transition. This extreme approach is in large part responsible for the sharp decline in income during the transition. On Land-2 the proportion of land allocated to corn was limited so as to minimize the amount of organic corn following conventional corn in the first year of the transition models. Having organic corn following conventional corn could lead to severe yield losses resulting from pest infestations, since pesticides are not used in the organic corn (except in emergencies) and the natural predators and rotational effects would not reach their full potential until after more years of or-

Table 1. Income Assuming Various Herd Sizes for TRANS Model

Herd Size	Income
213	\$44,300
200	47,300
150	53,500
100	56,000
50	57,000
0	57,000

ganic farming

On Land-2 and Land-3 alfalfa cannot be established during the baseline year because of lack of a nurse crop. This delays the first harvest of a profitable alfalfa hay crop by a year. These findings illustrate Grosch's (1985) point that a transition becomes more difficult the more chemically intensive the conventional operation is. Grosch referred primarily to the biological transition effect, but his statement is also true for the rotation adjustment effect of the transition. This means it might be a successful strategy to gain a gradual transition by reducing the intensity of the conventional crop rotation before adopting the full transitional rotation. This would reduce the financial losses during the transition, but it might also lower the profit during the end of the conventional management state.

The different amounts of manure needed on the different land classes in the established organic situation (see Table 2) reflect the different proportion of legumes (especially alfalfa) in the crop mix. The absence of alfalfa in the profit-maximizing rotation on Land-1 means that on good quality land, under the assumed prices and yields, it is more profitable to have a crop rotation that relies entirely on soybeans and the import of manure for nitrogen rather than to commit the land to three years of alfalfa.

Three conclusions emerge from the findings: (1) Even if there is a high proportion of alfalfa in the crop rotation, manure is still needed during the transition period to bridge the gap until the alfalfa is fully established. (2) If a crop rotation does not include a perennial legume, the need for imported nitrogen remains basically constant over the years, and (3) It is necessary to spend more on nutrients during the transition period than in the established organic farming situation.

The results of TRANS when beef is introduced into the programming model indicate that the beef feeding enterprise was not the most profitable use of resources under the circumstances of the Nutztown farm. For small sizes of beef herd the decrease in income is modest. If the farmer fattens 100 head of beef, the income in the established organic situation is only \$1,300 lower than without beef (Table 3), whereas with 213 head, the sacrifice in income is ten times greater. Sensitivity analysis showed that the beef enterprise remains unprofitable even with substantially higher beef prices. The manure produced by the cattle as an input to the organic system is included as a positive contribution in this calculation. As with the crop enterprises, income from the beef feeding operation is calculated as the net return over cash operating cost.

Limitations of the study

As a hypothetical case study based on an actual Pennsylvania farm, this study illustrates by mathematical programming simulation how a transition from chemical-intensive to organic farming could have occurred. The hypothetical character of the study implies both strengths and weaknesses. The models are based largely but not entirely on empirical data. In the construction of the transitional models, the possibility of a decline in yields was taken into account. Both a positive and a negative borderline case were modeled. An actual transition would probably be somewhere between those extremes. Also, it is possible, though not very likely in most crops and locations, that yields might increase during and after the transition, as compared with conventional farming. If so, the income comparisons would be different, depending on variations in production costs and returns.

The study incorporates only a limited part of organic methods. It was based on data collected on a single farm. Other farms might use different enterprises successfully or might use a different production technology for similar enterprises, thus obtaining different costs,

yields, and incomes.

If many farms were to attempt the transition from chemical-intensive to organic methods of production, the prices of farm commodities such as beef, corn, and wheat, as well as the cost of inputs such as manure, would be likely to change. For example, shortages of manure could drive up its price, reductions in crop yields could cause commodity prices to rise; the most profitable rotations would change as prices of commodities and inputs changed; regional and international patterns of production could be altered; the profitability of organic and conventional farming could be modified, and the pattern of farm size could be affected. All these possibilities lie beyond the scope of this study.

Ordinarily, multi-year economic models include a procedure for computing the discounted present value of several years of income, using an assumed discount rate. Because the procedure used in this study gives high priority to attainment of a meaningful and stable organic rotation, introduction of a discount rate would not change the optimal solution. It would just discount the incomes, without having any influence on any of the cropping activities. For purposes of the present study, undiscounted income is maximized. Therefore the income stream over the transitional period is not adjusted for loss of value due to inflation or for possible interest earnings on income. That is, income earned during early years of the transition is not valued higher than income in subsequent years.

This study was not designed to decide whether organic or conventional technology is more profitable. The following limitations are relevant to such a comparison:

(1) Comparisons of conventional management, the transition phase and established organic management are meaningful only if the management levels are comparable. For this reason this study used linear programming to find the most profitable combination of crops for each scenario being modeled. This approach involves approximation and judgment. For instance, yields and resource requirements for organic crop ro-

tations during a transition phase can only be estimated because experience is limited.

(2) The assumption about equal yields in a conventional and the established organic system (in TRANS) can be criticized. As a whole the literature reports slightly lower yields on organic farms than on conventional farms (Diercks, 1983; Grosch, 1985; Vogtmann, 1984). However, in the case of corn, which plays a major role in the crop rotations on this farm, Lazarus et al. (1980) report significantly higher yields for rotational corn than for continuous corn. This is true regardless of the type of rotation and can be considered a positive rotation effect. In this study, the conventional corn is continuous and the organic corn is in a rotation. This would tend to favor the organic yields. It is possible, of course, for conventional farms to grow corn in a rotation and thereby capture the rotation benefit (in higher yields) while still using chemicals and other conventional technology. As a whole it can be said that the assumption of equal yields is a defensible one, but by no means the only one possible.

(3) On the cost side, the amounts of potassium and phosphorus assumed to be required in the transition models are the same standard replacement requirements as applied in the conventional system. These rates are higher than the literature on organic agriculture would suggest. This imposes an artificial disadvantage on the organic system, because higher amounts than usually recommended for this system are required in the present study for the sake of reaching conservative estimates for income and long-term sustainable yields. Organic farmers usually operate on the lower range of nutrient requirements and do not routinely add every year what has been taken away from the soil in crops, erosion, and leaching. In an effort to avoid adding commercial fertilizer, organic farmers try to recycle nutrients as much as possible on the farm (USDA, 1981).

(4) The optimum farm plans developed in this study break the nutrient

cycle on the farm because the beef feeding enterprise is not profitable under the prices assumed in this study.

(5) While resource requirements and costs in the transition budgets are assumed to be the same as those in the established organic budgets, yields vary. However, there is a real possibility that a farmer during the transition would incur higher cost because of the need to apply pesticides in an emergency case or to do additional cultivations to fight severe weed pressure. This would further decrease profits during the transition.

(6) The output prices are assumed to be the same in conventional and organic in this study. For certain commodities, a premium price is received if they are marketed as "organically produced." This premium depends on the commodity, location, access to organic markets, and marketing skills of the farmer. If premium prices could be attained, the relative profitability of organic farming would be higher than indicated in this study.

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Exhibit D

Legumes: Their potential role in agricultural production

James F. Power

Abstract The energy crisis of the late 1970's has raised the question of the wisdom of depending upon fertilizer nitrogen as the primary source of N input into crop production systems. While present and past price structures have favored fertilizer-N over biologically fixed N, there are a number of other benefits of legumes in a cropping system in addition to their effects on N availability. Among these are less potential for environmental degradation and improved soil physical conditions and water relations, but it is difficult to assign economic value to many such benefits. In addition to the economics of the present price structure, disadvantages of using legumes could include reduced total production and increased need for livestock in a farming enterprise (these could be considered assets from some aspects). Legumes are presently used in short-term rotation, such as corn-soybean, or in continuous corn with a legume winter cover crop. These systems are finding widespread use and offer the producer many benefits, as well as helping to solve several major environmental problems associated with N use in agriculture.

Introduction

Legumes have been used in agricultural production since the earliest of civilizations. They have served as the primary source of nitrogen for many cropping systems, as well as providing food for humans and domestic animals. In many developing agricultural regions of the world, legumes are still used extensively for these purposes.

In the last several decades, the widespread availability of synthetic nitrogen fertilizer in many nations has resulted in a major decrease in the cultivation of legumes (Figure 1). An exception to this trend has occurred for soybean (*Glycine max*), a widely grown grain legume that has increased within the last five decades in the United States from almost nothing to tens of millions of hectares. Although soybean grown in rotation with corn (*Zea mays*) enhances corn production (Voss and Shrader, 1984; Hesterman et al., 1986), studies with N-isotopes indicate that after harvest of the soybean

seed, soybeans contribute little if anything to total soil N (Heichel, 1987).

The exclusion of other legumes from cropping systems these last several decades resulted not only from the availability of fertilizer N, but was also accelerated by the conversion to fossil energy as a source of power for American agriculture. Because of this change, farmers were no longer compelled to use as much as 25 percent of their land for the production of forage and grain for draft animals. Many farmers eliminated all livestock from their operations, moving to cash grain enterprises and making them entirely dependent upon nitrogen fertilizers as their source of added N.

The energy crisis of the 1970's, with attendant increases in cost and reduced availability of N fertilizers, caused many producers to evaluate the stability of continued dependence on synthetic N fertilizers as their only N input. Even though the initial energy crisis has abated somewhat in recent years, economic stress in agriculture, coupled with knowledge that N fertilizer prices probably will again greatly increase at some time in the near future, has resulted in many farmers again considering the use of legumes in their enterprises.

Benefits from legumes

The ability of legumes to fix atmospheric N, and thereby add external N to the crop-soil ecosystem is a distinct benefit of legume culture. When fertilizer-N is expensive or unavailable, crop production systems depend on the N fixed by legumes to maintain the N cycle at a sustained productive level. Such limitations of fertilizer-N availability and cost are not uncommon in many developing countries.

The quantity of N biologically fixed each year by legumes varies greatly from zero to several hundred kg N per ha (Table 1). Many grain legumes are efficient at N fixation. Variables affecting quantity of N fixed include not only legume species and cultivar, but also such factors as soil type and texture, pH, soil nitrate-N level, temperature and water regimes, availability of other nutrients, and crop (especially harvest) management. The latter factor is extremely important. For instance, alfalfa (*Medicago sativa*) may add up to several hundred kg N/ha to the soil if a final cutting of hay is not removed, compared to less than 150 kg N if only the roots and stubble remain (Heichel, 1987).

The economic value of the N fixed by legumes also varies widely. One must consider the cost of production of the legumes, the amount of fixed N returned to the soil, and the availability of this N for future crops. Often, these costs are compared directly against the cost of purchasing and applying an equivalent amount of N fertilizer plus the net income lost by producing a legume instead of a grain crop (if the legume is grown in rotation). In the past several decades, the cost of production and price of N fertilizers have been such that this type of calculation would generally favor the use of N fertilizer. This fact is largely

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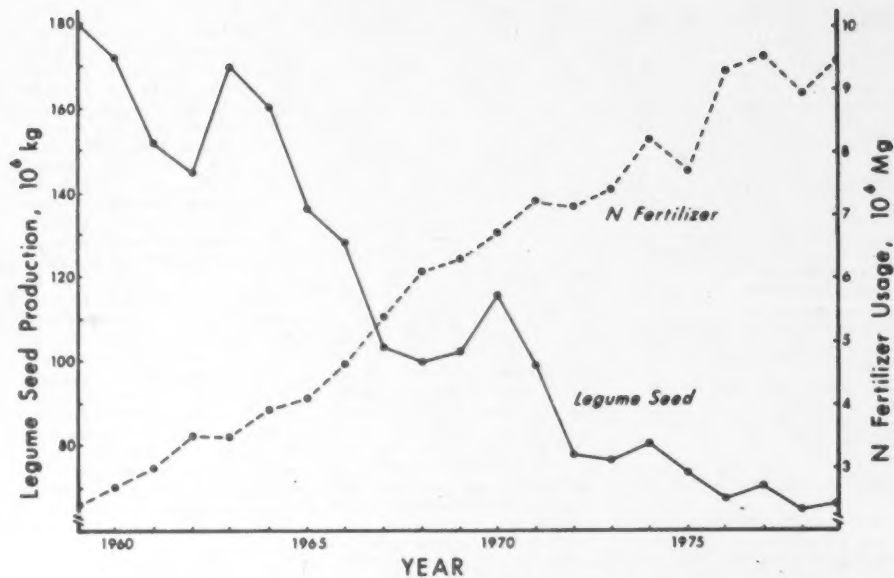


Figure 1. Changes in United States forage legume seed production and N fertilizer usage, 1959-1979 (Power and Papendick, 1985).

responsible for the decreased use of legumes in our crop production systems these past 40 years.

There are other benefits from using a legume on a cropping system that should be figured into any comparison with fertilizer-N, but unfortunately, they are often omitted because of difficulty in quantifying them. Usually, yields of a grain crop grown in rotation are at least

10 to 20 percent greater than those for continuous grain, regardless of the amount of fertilizer applied to the continuous grain (Table 2). This response is often referred to as the rotation effect. Because additional N will not entirely eliminate this yield difference, much of the response must be due to factors other than N availability. Cook (1984) and others have shown that rotation of crops

reduces population and activity of some pathogenic soil organisms. Likewise, rotations break the weed and insect cycles that often predominate with continuous cropping. In addition, there is the possibility (although often difficult to prove) that rotations may enhance soil structure and improve air-water relations in the soil.

Legumes may have long-term benefits on some soils that again are difficult to convert into monetary value. Usually legume rotations, compared to continuous grain cropping, result in enhanced soil organic matter content and mineralizable N. This provides not only better control of N availability, but also improved soil structure, less energy for cultivation, and less erosion (Hoyt and Hargrove, 1986). Reduction in erosion rate, over a period of decades, can have a major influence on the properties and productivity of some soils (Mielke and

Table 1. Reported quantities of dinitrogen fixed by various legume species (adapted from Heichel, 1987).

Species	N fixed kg/ha/yr	Species	N fixed kg/ha/yr
Alfalfa	114-223	Hairy vetch	111
Alfalfa-orchardgrass	15-136	Ladino clover	164-188
Clarke clover	21	Lemol	167-189
Birdfoot trefoil	49-112	Red clover	66-113
Chickpea	24-84	Soybeans	22-310
Common bean	2-121	Sub clover	58-183
Crimson clover	64	Sweet clover	5
Faba bean	178-251	White clover	128
Field peas	174-196		

Table 2 Effect of previous crop on corn grain yield (Langer and Randall, 1981)

Nitrogen rate kg/ha	Previous Crop			
	Corn	Soybean	Wheat	Wheat-Alfalfa
0	4.45	6.89	6.85	7.25
45	5.80	8.14	8.00	8.00
90	6.46	8.70	8.78	8.80
135	6.85	8.97	8.78	9.05
180	7.36	9.37	8.98	9.24
225	7.53	9.37	9.20	9.11

¹ Mg = megagrams = 10³ gm = metric tons.

Schepers, 1986). The enhanced mineralizable N levels in soils with legume rotations compared to those for continuously cropped soils may aid greatly in control of ground water quality. With legumes, not only is less fertilizer-N required, but the level of nitrate N in the soil at any one time is usually less, so there are fewer nitrates to leach below the root zone.

Disadvantages of legumes

The obvious immediate monetary disadvantages of using legumes in cropping systems have been pointed out previously, using past prices for fertilizers and grain. Prices of grain have decreased greatly in recent years. Cost of fertilizer N will eventually increase because it is derived from a finite resource (natural gas), whose cost will increase as reserves are depleted. Thus, the direct monetary advantages of fertilizer-N over biologically fixed N that have predominated in the past may not be so great now or in the future.

When legumes are grown as rotation crops, they reduce total grain production per farm (or other unit of area) when compared to continuous cropping. If practiced on a national scale, total grain production for the nation would be decreased. Whether or not this change would be an advantage or a disadvantage to American agriculture is debatable, and is dependent upon changes in international markets, government policies, and other factors. If use of legume-based rotations were widely utilized, however, it is likely there would be an attendant increase in livestock production. Such a change again, on a national scale, would greatly change the livestock

marketing picture and could be considered either an advantage or a disadvantage.

Because of the great decrease in legume production these past several decades, few legume seed producers remain and the cost of seed for many legume cultivars is relatively high, or large quantities of seed are not available at any price. Supposedly if there were greater demand for legume seed, more seed producers would go into business, and normal supply-demand relationships would be established.

Production of grain legumes, such as soybean, may result in greater erodibility of soil than occurs after a grain crop. Although this is a common observation, measurements of soil physical properties after soybean as compared to corn have generally failed to identify any one factor as being responsible (Fahad et al., 1982). Amount of soil erosion that actually occurs, of course, depends on the management practices used. For example, soil erosion on soybean land can be minimized by using no-till or reduced tillage techniques.

Pests are sometimes enhanced by including certain legume cultivars in a cropping sequence (Egunjobi, 1984). For instance, nematode problems in a corn-soybean rotation may be greater with than without using hairy vetch (*Vicia villosa*) as a winter cover crop. A few other examples of legumes intensifying pest problems occur under certain conditions. One of the most common is more difficulty in controlling some weeds when legumes are grown because of limitations on the kinds of herbicides that can be used. However, this disadvantage is often offset by breaking up weed growth cycles by the inclusion of

a legume.

In rainfed agriculture, a major objection to including legumes in cropping systems is the competition for water that may exist between the legume and the subsequent grain crops. This competition is especially significant in semi-arid regions. Haas and Evans (1957) showed from over 40 years of dryland data at a number of Great Plains locations, that rotations that included alfalfa or sweet-clover (*Melilotus*) usually produced lower wheat yields than those without legumes, even though legumes often increased soil organic-N content. This decrease was attributed to deeper and more thorough drying of the soil by the perennial legumes. Even after a year of fallow, soils plowed out of legumes generally contained 5 to 20 cm less soil water and yielded correspondingly less wheat. Under these limited water conditions, by growing a legume, enhanced N availability is traded for reduced water availability. In the wheat fallow regions of the Great Plains, water is often more deficient than N, so the N added by perennial legumes is of little benefit to the wheat.

Legumes used in rotation

Legumes are often used in rotation with cash grain crops. For purposes of discussion, we can divide this into long-term and short-term rotations. Long-term rotations would be those cropping systems in which the legume is the principal crop for more than one entire growing season, whereas in short-term rotations the legume is the primary crop for no longer than one growing season. An example of a long-term rotation would be alfalfa or clover grown in rotation with corn. The corn-soybean rotation would represent a common short-term rotation. Another short-term rotation might be continuous corn with a legume winter cover crop, such as hairy vetch.

The value of legumes in long-term rotation has been documented frequently in rotation experiments which were prevalent until the last few decades. Rothamstead in Great Britain, Morrow Plots in Illinois, and the Sanborn Fields in Missouri — where classic experiments

have been in progress for 100 or more years-- show the value of crop rotations which include perennial legumes. These experiments show that grain yields can be maintained at relatively high levels through the continued use of legumes in a rotation.

The effects of legumes on N availability and yield of following grain crops in a rotation are often significant for only one or two crops (Table 3). From 135 to 200 kg fertilizer N per ha had to be applied to continuous corn to achieve yield levels comparable to those obtained two to three years after a legume (Table 3). Total grain production over the period of the rotation is of course considerably less than for grain monocultures. In order to obtain maximum economic benefit from a rotation, many farmers incorporate a grazing livestock enterprise with the grain production enterprise-- seldom is a long-term legume rotation without livestock profitable.

Corn-soybean rotations are very common and are an example of a short-term rotation. Often corn yields after soybeans are greater than for continuous corn (Table 2), and often with less input of fertilizer-N. Part of this enhanced corn yield may result from greater N availability in soybean stubble compared to corn stover (Power et al., 1986). However, soybeans often result in a net N deficit in the soil because more N is removed in the harvested grain than is biologically fixed (Heichel, 1987). Thus, it is apparent that all the extra yield for corn following soybeans compared to continuous corn cannot be attributed to biologically fixed N. Undoubtedly the "rotation effect" is also a factor, breaking up weed, disease, and insect cycles, or providing undetermined benefits from residues or changes in physical properties.

A still shorter-term legume rotation is involved when cover crops are used. A common system, especially in southeastern United States, involves the use of a legume as a winter cover crop for continuous corn (Hargrove et al., 1985). Hairy vetch is commonly used for winter cover, although a number of other legumes could be planted. Hargrove (1986) found that these legume cover crops increased soil organic and inorganic N levels as well as yield of the following

Table 3. Corn grain yields as affected by number of years after a legume in a rotation (Voss and Strader, 1984).

Soil Association	Years since legume			Continuous corn	
	1	2	3	N applied	Yield
	Mg/ha ¹			kg/ha	Mg/ha
Clarion-Webster	8.16	7.91	7.66	200	7.41
Grundy-Sherby	7.47	7.09	—	200	7.22
Galva-Primghar	8.10	7.97	—	135	7.22
Carrington-Clyde	7.28	6.59	—	180	6.65
Lancaster	8.22	7.72	7.53	168	7.28

¹ Mg = megagrams = 10⁶ gm = metric tons.

sorghum crop (Table 4). Sorghum yield increases from the legume cover crops were equivalent to responses to application of 61 to 97 kg fertilizer N per ha. There are also other benefits from the winter cover crop--soil erosion control (especially after silage corn), reduced runoff, and reduced leaching of nitrates (and better ground water quality).

Summary

With the development of new technologies in the last few decades and the prospect for even greater developments in the future, agricultural scientists need to rethink the potential role of legumes in soil and crop management systems. Earlier generations used legumes because they provided a dependable source of added N as well as a forage base for the livestock systems which were almost mandatory for most farmers. The introduction of inexpensive N fertilizers, herbicides, and other pesticides, improved cultivars, mechanical power and better designed machinery, and other advancements made it possible and economically profitable for many farmers to convert from legume-based crop rotations to monocultures or simple rotations of

grain crops. However, the energy crisis of the late 1970's showed that this production system was highly vulnerable to the volatile supply and demand price structure of foreign oil. Monocultures also often increased soil erosion potential, increased risk, required more capital, and had other limitations (Power and Follett, 1987).

The primary question today is how to produce crops in a manner that is economically profitable, environmentally acceptable, and sustainable. Because legumes offer an alternative source of N, usually aid in soil erosion control, and offer potential for improvement of surface and ground water quality, we need to know how we can most effectively utilize legumes in cropping systems. In only limited situations is it probable that the legume-based crop rotations of earlier generations will be useful because farmers no longer need to produce feed for draft animals, because cattle production and feeding is frequently no longer integrated with crop production enterprises, and because the availability of fertilizer-N and improved tillage practices for erosion control reduce need for rotations. However, there are a number of opportunities for using legumes in

Table 4. Soil inorganic and organic N in the 0 to 75 mm depth and sorghum grain yields following winter cover crops (Hargrove, 1986).

Cover Crop	Soil N		Sorghum yield	
	Inorganic	Organic	Q-N	112-N
	kg/ha	g/kg	Mg/ha ¹	
Fallow	8	0.58	2.89	3.91
Rye	8	0.65	2.56	3.87
Crimson clover	14	0.65	3.91	4.22
Subterranean clover	20	0.81	3.88	3.86
Hairy vetch	21	0.80	3.96	3.79
Common vetch	14	0.63	3.66	3.95

¹ Mg = megagrams = 10⁶ gm = metric tons.

short-term situations—such as simple rotation, double cropping or intercropping, and as cover crops. We need to know the ability of various legume species and cultivars to grow and to fix atmospheric N, as well as amount and depth to which soil water is depleted. We need this information for various seeding dates and temperature regimes. With this type of information, we can then select the best legume cultivars to use for a particular situation, whether it be to intercrop with small grain, short-term rotation (such as double cropping), use as a winter cover crop, or for other uses. We need much research to obtain some of this basic information so that we can design the ideal cropping and management systems for a given climate.

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Exhibit ES I X T H D R A F T**TRUST AGREEMENT**

This Trust Agreement shall serve to establish the permanent but conditional fiduciary relationship between the United States Government and Wildlife Habitat Charitable Trust, a 501(c)3 tax-exempt conservation trust.¹

Wildlife Habitat Charitable Trust², (hereinafter called the Trust), acting either as a receiver³ or collaborating with a receiver, shall conduct a pilot program for restructuring delinquent Farmer's Home Administration (FmHA) loans under the following:

General Terms and Conditions

1. A major objective of this management plan is to give many family farmers a fresh start in a new direction along the guidelines indicated by the Highest and Best (sustainable) Use studies.
2. The Department of Agriculture and Department of Treasury will transfer to the Trust (or receiver) appropriate legal instruments pertaining to certain delinquent farm loans eligible to be restructured.
3. The Trust will accept all loan restructuring assignments with a mandate to prepare the land for transition to low-input, alternative agriculture farming practices⁴ which conserve important soil, water and wildlife resources and/or permanently convert marginal lands to pasture, wildlife habitat or wetlands.

¹ Exhibit F identifies what the Trust is and who the principal officers are.

² Principal offices of the Trust are planned for San Antonio, Texas and Washington, D.C. Trust operations will be highly decentralized. Regional offices will be wherever there is a need for one.

³ Receivers are agents appointed to administer a property or business when it appears necessary, in the interest of justice, that a qualified and impartial party assume control.

⁴ See Exhibit B.

4. The Trust will conduct Highest and Best Use studies on each property to determine the most profitable and sustainable use for the property.⁵ These studies will take into account the contribution of specific uses to local community and rural development goals as well as public goals and the benefits of those uses to taxpayers as well as future individual property owners.⁶
5. All land eligible to be enrolled in the Conservation Reserve Program (CRP) will be enrolled under conservation plans prepared by the Trust and approved by the Soil Conservation Service (SCS) according to prior agreements between the Director of the SCS and the Trust.⁷
6. Cultivated land not eligible to be enrolled in the CRP and not already in perennial crops may be taken out of commodity production for up to three years while:
 - A. a conservation compliance plan is being implemented,
 - B. an optimally effective crop rotation plan can be established⁸ and/or
 - C. more profitable legume/grain inter-cropping techniques are perfected.⁹

⁵ Many failed agricultural operations were planned and developed upon unrealistic expectations. A Highest and Best Use study can help minimize future failures.

⁶ This is most relevant with regard to wetlands. Filter strips, sediment catch areas and aquifer recharge zones may have a 10 fold greater public use value with respect to reducing non-point source pollution and improving water quality than can ever be realized by an individual landowner. Benefits to migratory waterfowl and fisheries are concurrent but seldom of economic significance to private landowners.

⁷ The CRP regulation dealing with ownership requirements and the \$50,000 payment limitation needs to be waived for non-profit conservation organizations which were organized "to conserve important soil, water and other natural resources and to lessen the burdens of government".

⁸ This is a "perpetuating-alternative-legume-system" or "PALS" development program like the one described fully in Exhibit B.

⁹ "There are a number of other benefits of legumes in a cropping system in addition to their effects on N availability. Among these are less potential for environmental degradation and improved soil physical conditions and water relations.

7. The redevelopment phase of the program is projected to take three or four years. Although many marginal properties cannot generate a positive cash flow during the redevelopment phase, compensating increases in future net operating income (and market value) are reasonable expectations.
8. One of the objectives of this management plan is to recapture as much of the defaulted loan as possible for the government. Under the current real estate and commodity market conditions, this can only be accomplished by increasing the sustainable net income by significantly reducing inputs, risk and debt.
9. All alternative farming technology and plant varieties developed during the course of this program will be in the public domain and immediately available to the SCS for wide scale application.
10. This Trust Agreement is being made in anticipation of the highest degree of cooperation between the Services of the Department of Agriculture and the Trust (and/or receiver).
11. Status reports will be prepared quarterly. Audited financial statements will be prepared annually.

"The primary question today is how to produce crops in a manner that is economically profitable, environmentally acceptable, and sustainable.

"-legumes offer potential for improvement of surface and ground water quality, we need to know how we can most effectively utilize legumes in cropping systems.

"We need to know the ability of various legume species and varieties to grow and to fix atmospheric N, as well as amount and depth to which soil water is depleted. We need this information for various seeding dates and temperature regimes. With this type of information, we can then select the best legumes to use for a particular situation, whether it be to inter-crop with small grain, short-term rotation (such as double cropping), use as a winter cover crop, or for other uses. We need much research to obtain some of this basic information so that we can design the ideal cropping and management systems for a given climate," James F. Power, USDA - ARS, see Exhibit C.

12. The Trust will conduct the land management and restructuring part of the program at no cost to the FmHA.¹⁰
13. The Trust will earn a trustee's fee of 10% of the Market Value of the property upon its complete reorganization or liquidation.

Powers of Trustees

In order to carry out the purposes of any trust established by this Trust Agreement, the trustees in addition to all other powers granted by this instrument or by law, shall have the following powers over the trust estate, subject to any conditions specified elsewhere in this Trust Agreement.

1. To retain any property received by the Trust estate for as long as the Trustee considers it advisable.¹¹
2. To manage, control, repair, and improve all trust property; to construct, alter, or repair buildings or structures on real property; to settle boundary lines, easements, and other rights with respect to real property; to partition and join with co-owners and others in dealing with real property in any manner.¹²
3. To sell any trust property at public or private sale at such time and price and on such terms and conditions (including credit) as the Trustee may determine and to exchange any trust property.

¹⁰ The Trust will not require any new funding from FmHA or USDA for this program.

Management costs can be funded by a combination of:

- A. A loan guarantee against earned Trustee fees,
- B. CRP payments,
- C. borrowing against either future CRP payments or the property and,
- D. conventional fund raising from sportsmen and conservationists.

¹¹ The Trust has a long term interest in the stewardship of Conservation Easement lands.

¹² This provision is necessary to consolidate or partition properties into economically feasible units.

3. To sell any trust property at public or private sale at such time and price and on such terms and conditions (including credit) as the Trustee may determine and to exchange any trust property.
4. To adjust or compromise any claims for or against the trust and to agree to any rescission or modification of any prior contract or agreement.
5. To lease any property for terms within or beyond the duration of the trust for any purpose that the trustees, in their discretion, may deem advisable, with or without an option to purchase, and to make such improvements or effect such repairs or replacements to any real estate subject to this trust, and to insure such real estate against fire or any other risks, and to charge these expenses to principal or income or to a part of each as the trustee may deem proper, and to develop such property, dedicate it to public use, subdivide it, or grant easements and make restrictions as the trustee may deem advisable.
6. To borrow money on such terms and conditions as the trustee may in their discretion deem advisable, and to mortgage or pledge or otherwise encumber or hypothecate Trust assets.
7. To commence or defend at the expense of the trust estate any litigation affecting the Trust or any property of the Trust estate deemed advisable by the trustee.
8. To pay all taxes, assessments, compensation of the trustees, and all other expenses incurred in the collection, care, administration and protection of the Trust estate.
9. To employ any attorney, appraiser, accountant, broker, land manager, tax specialist or any other agent deemed necessary in the discretion of trustee; and to pay from the Trust estate reasonable compensation for all services performed by any of them.
10. To do all the acts, to take all the proceedings, and to exercise all the rights, powers, and privileges that an absolute owner of the property would have, subject always to the discharge of their fiduciary obligations; the enumeration of certain powers in this Trust Agreement shall not limit the general or implied powers of the trustees; the trustees will have all additional powers that may now or later be conferred on them by law or that may be necessary to enable the trustees to

administer the Trust in accordance with the provisions of this Trust Agreement subject to any limitations specified in this Trust Agreement.

Duties of Trustees

1. The standard care required of trustees in the administration of this Trust is that of an ordinarily prudent person in the conduct of his or her own private affairs under similar circumstances and with a similar object in view.
2. A fundamental duty required of the trustee in the administration of this Trust is a duty of loyalty to the beneficiaries under the Trust. The trustee must act in the highest good faith in dealing with the interest of the beneficiary and must cast aside completely their own personal interests and opportunities for gain.
3. When Trust money cannot be applied either immediately or within a short time to the purposes of the trust, it is the duty of a trustee to make the fund productive to the beneficiaries by investment.
4. In this active Trust, it is understood that the law does not charge the trustee with responsibilities not imposed and assumed under the Trust Agreement. The trustees of Wildlife Habitat Charitable Trust pledge themselves to do their very best but cannot take responsibility for the burdens of implied duties due to the scope and magnitude of this Trust assignment.

Limit of Trustee's Liability

1. No trustee appointed under this Trust Agreement shall at any time be held liable for any action or default of himself or herself or of any other co-trustee or of any other person in connection with the administration of the Trust estate, unless caused by the trustee's own gross negligence, bad faith, or willful commission of an act in breach of trust.

Bonds for Trustees

1. No bond for the faithful performance of duties shall be required of any person named in this Trust Agreement as trustee or appointed as trustee in the manner provided for in the Declaration of Trust of Wildlife Habitat Charitable Trust.

IN WITNESS WHEREOF, the Grantor and Trustee have hereunto set their hands this ____ day of _____, 198__.

Acknowledgements (to be added)

Exhibit F**WILDLIFE HABITAT
Charitable Trust**

The Trust is a network of exceptionally competent businessmen, land managers and scientists who are devoted to the conservation of important natural resources. It is not a membership organization and it is not affiliated with any other conservation organization.

**Board of Trustees
(The Governing Board)**

Ed Mattson - 14 years experience as president and CEO of a \$1.6 billion savings and loan company. He is recently retired and will serve as the Trust's President and Chief Administrative Officer.

Dr. Sam Beason - Director of the Caesar Kleberg Wildlife Research Institute, Quail Unlimited and Texas Wildlife Association. He also manages a team of research scientists with special emphasis on methods to diversify farm and ranch income through wildlife conservation management. He has published more than 50 articles and is Editor-in-Chief of the Wildlife Management Journal.

Michael Dowling - Former owner of National Yellow Page Services, is a business executive with exceptional expertise in marketing, public relations and computer networking. He will serve as associate CEO.

Garry Bales - Co-founder of WILDLIFE HABITAT Charitable Trust will serve as CEO. He has been an agricultural research scientist and management consultant.

Mary Jane Bales - Co-founder of WILDLIFE HABITAT Charitable Trust has special interests in botanical solutions to land reclamation. She is a teacher, horticulturist and second generation conservationist.

**Associate Trustees and Consultants
(The Ways and Means Board)**

Dr. Robert C. Suter - Professor of agricultural economics at Purdue University, will serve as the Trust's staff training officer and senior farm management consultant. He is a nationally recognized authority on rural property appraisal and land management.

WILDLIFE HABITAT
Charitable Trust
page 2

Dr. I. Garth Youngberg - Executive Director, Institute of Alternative Agriculture (IAA) has recently been invited to serve on the Board of Trustees. Dr. Youngberg has placed the information resources of IAA at the disposal of the Trust.

Dr. Ray Hinchman - Energy and Environmental Systems Division, Argonne National Laboratory at the University of Chicago, heads up a team of extraordinarily competent land reclamation specialists who are active internationally.

Morris Wosnig - CPA with the international accounting firm of Ernst & Whinney for 20 years. Responsible for the operating controls and procedures, strategic planning, budgets, investments, feasibility studies, tax planning and creation of real estate partnerships for a \$1.6 billion savings and loan company for the past seven years. He will direct the Trust and Fiduciary and Accounting Division.

Dr. Howard Stutz - Fulbright Scholar and Guggenheim Fellow is a world class native plant breeder. His special interest is breeding useful plants for reclamation of damaged land and arid environments.

Dr. Jerran Flinders - Botanist and western wildlife habitat specialist, former Chairman, Department of Botany and Ranch Science, BYU and editor of several range and wildlife management journals.

Gary Allen Burns - Consulting forester, fee appraiser for the Fish & Wildlife Service, author of several technical reports and writes a regular column on forestry for the Southeastern region.

Ontra Companies - A state-of-the-art REO/ORE asset management company which provides services to regulated clients nationwide in the Savings and Loan and banking industry. Ontra has a proven track record having participated in the disposition of \$139,000,000 in REO/ORE assets. Regulatory clients include FDIC, the Federal Home Loan Bank and the Federal Asset Disposition Agency.

David Senter - Executive Director, American Agriculture Movement

Sharpe McCollough - Rural development and tourism consultant in Australia. He will assist in the Trust's rural development program.

Exhibit G

AN EXPLANATION OF THE
ESTABLISHMENT AND OPERATION OF THE
INDIVIDUAL FARM TRUST SCHEME PROPOSED
BY THE STATE BANK OF SOUTH AUSTRALIA

STATE BANK INDIVIDUAL FARM TRUST SCHEMEINTRODUCTION

The State Bank of South Australia has examined carefully the plight of its former clients on Eyre Peninsula who have defaulted in the payment of interest or repayment of principal on farm loans. The State Bank has decided that for the vast majority of these properties, the Bank will encourage the present owners to agree to the ownership of the property being transferred to an Individual Farm Trust rather than face a forced mortgagee sale.

A mortgagee sale is likely to cover the liability to the Bank, but due to the very weak property market at present would leave the present owners with minimal return. It would destroy the livelihood of many Eyre Peninsula families.

This paper outlines briefly how a State Bank Individual Farm Trust will operate and how it will benefit all parties involved.

ESTABLISHMENT OF A TRUST

Where there is default on the Bank's loan, there will be consultation with the present owner/operator and other secured creditors. Where it is considered viable the ownership of the property will be transferred to an Individual Farm Trust. The State Bank, as first mortgagee, will be issued one dollar (\$1) units in the Trust to the value of the Bank's outstanding loan and accrued interest. Other secured lenders will be issued units on a similar basis to cover their outstanding loans and accrued interest. The present owner/operator will be issued units to cover the difference between the current value of the property (land and improvements) and the value of units issued to secured lenders. The Bank has stated that all owner/operators will be assured units at least to the value of \$50,000 or 10% of the value of the property, whichever is the lesser amount. This is done as a gesture of goodwill by the Bank to ensure the present owner/operator has a continued interest in the equity of the property.

The units offered to the first secured lender will be A class units, then B and C class units to other secured lenders in decreasing order, and then D class units to the present owner/operator.

OPERATION OF A TRUST PROPERTY

The Bank will appoint Trustees of the Trust. A manager will be contracted to supervise the management of all the farming properties, to be known as the Trust Manager. The property will be leased back to the present owner/operator to operate as a farming enterprise under the supervision and guidance of the Trust Manager, who will be an experienced agricultural manager. The lessee (or farmer) will be assured a living wage, paid on a regular basis, and provided with working funds to continue operating the property. The rental payment will be calculated on the basis of anticipated surplus funds for the year. Rent will be payable to the Trustees who will distribute the money, after deducting the operating expenses of the Trust, to the secured lenders with units in the Trust. These unit holders will receive a rental payment based on the value of the units (i.e. the outstanding loans and interest at the time of forming the Trust) held in the Trust. Rental would not be payable normally on units held by the operator (farmer). The higher the rental payment each year then the greater the opportunity for the farmer to own a greater share of the property when the secured lenders withdraw from the Trust.

At the end of the financial year if surplus funds exist, there may be an incentive payment to the operator. If large surplus funds exist those funds may be used by the operator to buy back units in the Trust from the secured lenders. This way the operator will be able to increase his equity in the Trust, which owns the property.

The main role of the Trust Manager will be to plan the farming operations for the property in conjunction with the farmer and to prepare a farm budget for the next year. The farm budgeting and monitoring of performance will be done in close co-operation with the Branch Manager of the State Bank, who will provide the operating funds for the property for the seasonal operations.

The Bank will take a charge over the operator's plant and equipment as security for these operating funds. Stock mortgages will be taken where the Bank provides funds for stock.

Whilst ownership of land and improvements will be transferred to the Trust, ownership of plant, equipment and stock will remain with the operator.

The Trust Manager will be able to assist the farm operators in improving the performance of their farms. The operator will still be responsible for day to day management decisions of the property.

ALLOCATION OF CAPITAL VALUE OF TRUST ASSETS

It is proposed to place the properties into Trusts for approximately 5 years. By this time operators may have been able to purchase sufficient Trust units to regain full ownership of the property (or Trust).

The Bank will have the right to decide when to sell the property, offering it initially to the existing operator. Of course, other unit holders including the operator will be consulted. Where all parties agree it may be appropriate for the Trust to own the property for longer than 5 years, to suit retirement or other arrangements that the operator may have.

On sale of the property the objective will be for the Bank and other secured lenders with units in the Trust to be repaid their original investment and a reasonable return on their outlay. Annual net rental payments from the Trust to secured creditors will be taken into account in calculating repayment and a reasonable return. The residual value of the property will go to the operator.

If property values return to the monetary levels of 1984 within the next 5 years, most operators will have preserved their original equity in the farming operation. A possible sharp rise in wheat prices, and hence land values, during the next 5 years could produce substantial capital gains for the operator.

If property values more than double in the next 5 years, the Bank and other secured creditors may receive a greater return on the original outlays, and a share of any capital gains exceeding the doubling of the property value. This would still leave the operator with substantial gains in the capital value of the units in the Trust.

BENEFITS OF ESTABLISHING THE TRUSTS

The main benefit of establishing Individual Farm Trusts is to allow existing owner/operators a chance to stay on their properties and the opportunity to work their way out of their debt problems. It means the property is not sold in a forced sale on a very depressed property market, with subsequent minimal benefit to the owner. It means the operator can continue to run the family farm, and provides breathing space for children to complete their education and to find employment. It means the farmer and spouse can stay there in the family home until other solutions are found. It may be that planned retirement is only a few years away.

The Trust option relieves the farmer from the daily worry of the debt problem, and so helps to resolve other problems. Because all secured lenders are in agreement with the Trust concept, it means the operator has medium term certainty of his farming operations which cannot sustain normal commercial loans at the present level of interest.

The Trust option provides time for wheat prices to increase from their present depressed levels and for these price rises to be reflected in land values and farm profits.

TAXATION IMPLICATIONS OF A TRUST

There are three different taxes that need to be considered. These are stamp duty, land tax and capital gains tax. The first two are State Government taxes, and the third one is a Federal Government tax.

The State Government has been requested to grant exemption for these trusts from stamp duty and land tax. The stamp duty exemption has been requested for property being transferred into and out of the Trust, for the transfer of Trust units, and any other tax obligations that may be identified. The Premier has agreed in principle to this request.

All unit holders in the Trust may be subject to capital gains tax if the property is subsequently sold.

Exhibit H

LENDER LIABILITY IN LOAN WORKOUTS

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LENDER LIABILITY IN LOAN WORKOUTSI. INTRODUCTION--"WHY DID YOU LOAN ME ALL OF THIS MONEY WHEN YOU KNEW I COULDN'T PAY YOU BACK?"

The recent multi-billion dollar lawsuits that were filed in Dallas by the Hunt brothers alleging that a group of lenders used fraud and deception to dominate and destroy their oil companies and conspired against them to monopolize the off-shore drilling business are the latest and most dramatic examples of a recent trend in which borrowers are suing their lenders in response to collection efforts and workouts on delinquent loans. Borrowers are becoming much more aggressive in their response to what they perceive as improper conduct by lenders when the loans become delinquent. Some of the claims may well be justified, but some of the borrowers seem to be saying: "Why did you loan me all that money when you knew I couldn't pay you back?" These borrowers are assisted by some very resourceful attorneys who have expanded some of the traditional concepts of contract and tort law and recovered substantial damages on behalf of their clients. This paper will discuss the various common law and statutory theories of liability, including the duty of good faith and fair dealing, control and undue interference, RICO claims and federal tax liabilities. The paper also recommends several practical steps that can be taken by lenders to reduce the risks in loan workouts.

There have been several excellent articles recently published on this subject which have been very helpful in the

preparation of this paper, including "Theories of Lender Liability: Practical Lesson for Lender and Counsel", prepared by Joseph Jude Norton for the February, 1986 bulletin of the State Bar of Texas Section on Corporation, Banking and Business Law (Volume 23, Number 2) and paper entitled "Trends in Lender Liability" presented on June 20, 1986 by the State Bar of Texas Section on Corporation, Banking and Business Law.

II. DUTY OF GOOD FAITH AND FAIR DEALING--

"TRUST ME" -

When the Uniform Commercial Code was enacted in Texas, most of its statutory language was taken at face value. For example, consider two UCC provisions:

§ 1.203: Every contract or duty within this title imposes an obligation of good faith in its performance or enforcement.

§ 1.201(19): "Good faith" means honesty in fact in the conduct or transaction concerned.

In spite of the clear language of these two statutes, the Texas Supreme Court in English v. Fischer¹ rejected the theory that every contract includes an implied covenant that neither party will do anything which injures the right of the other party to receive the benefits of the agreement. This has been called the covenant of good faith and fair dealing. In the English v. Fischer case, the mortgagee of a home refused to pay over the proceeds of a fire insurance policy in order to aid the homeowner in rebuilding after a fire. The majority of

the Supreme Court refused to hold that the parties to the loan owed each other a duty of good faith and fair dealing. However, the concurring opinion distinguished the equal "economic" positions of the claimants in the case before the court with the existence of a "special relationship" that may exist in other situations. The concurring opinion emphasized that elements of trust (such as a fiduciary relationship) or an imbalance of bargaining powers might mean a different result.

The stage was then set for "special relationships" between borrowers and lenders to trigger lender liability. However, to reach that stage the court was required to back away somewhat from its earlier holding. In La Sara Grain Co. v. First National Bank of Mercedes² the Supreme Court found a bank liable for unauthorized payments of checks and disbursements to the depositor's general manager. The transactions in La Sara were governed by the UCC and the court seemed to back away from its holding in English v. Fischer. The court said that "an obligation of good faith is imposed on the performance of every contract within the Code" and that "the test for good faith is the actual belief of the party in question, not the reasonableness of that belief."¹ Thus, because the bank knew the transactions were unauthorized, the bank had not acted in good faith and was held liable for \$7.5 million dollars.

The next expansion of the good faith doctrine occurred in the context of a "special relationship" and in conduct

explained by the lenders' apparent pursuit of self-interests. In State National Bank of El Paso v. Farah Manufacturing Co., Inc.⁴ the court was asked to determine whether the lenders had exerted duress in their relationship with Farah Manufacturing Co. ("Farah"). By letter and personal visits to key Farah board members the lenders had deceptively warned Farah directors that the lenders would declare a default if Willie Farah was reelected to the CEO position. The default would have included an acceleration of a \$22 million loan.

Since the note would have been accelerated, UCC § 1.208⁵ influenced the court's ruling on the transaction. It provides that a party may deem itself insecure and accelerate payment under an agreement, but he "shall have the power to do so only if he in good faith believes that the prospect of payment or performance is impaired." Relying on § 1.208, the court held that a lender may be liable for duress by acting in bad faith to accelerate or to threaten to accelerate a note, not because the security must be preserved, but to impose the lender's will on the borrower's actions. Thus, the lender must be motivated by a reasonable good faith belief that its security may be impaired before it can "threaten" a borrower.

Shortly after Farah, the Sixth Circuit announced an even broader standard of good faith and fair dealing which would be

based not only on actual belief of the parties but also on what a reasonable person should believe.

In Irving Trust,^{*} the court held that a lender could be held liable for abusing discretion to advance funds under the financing agreement under a theory of failure to act in good faith. | The borrower was engaged in the grocery business and had established a line of credit with Irving Trust to a maximum of \$3.5 million dollars. The credit line was fully secured by inventory and receivables. All of K.M.C.'s receipts were placed in a blocked account to which only Irving had access. The parties' loan agreement provided that all monies loaned were to be repayable on demand. After three years of transacting business under the credit line, Irving abruptly refused to advance \$800,000.00, which would have increased the loan under the credit line to just less than \$3.5 million.

While acknowledging the rights of Irving Trust to discontinue advancing funds, the court nevertheless found that the lender's failure to notify K.M.C. that it would no longer advance funds under the financing agreement breached the requirement that the parties deal with each other fairly in on-going relationships. The court reasoned that notice of the termination of contract relationships was necessary to permit the other party a reasonable time to seek a substitute arrangement.

It seems clear from the holding in these cases that the relationships of the parties and specifically the practices of the lending institution with respect to the borrower is a factor in determining liability under a claim of good faith and fair dealing. The successful claims do not arise from the contractual agreement between the lender and the borrower; instead the liability results from a course of action. The course a lender takes in a workout must be related to his reasonable belief that its security is in jeopardy when considered in the light of its ongoing relationship with the borrower.

III. Control and Undue Interference --

"Whose Business Is This Anyway?"

In the evolving world of lender liability, the courts appear to be reaching for a balance. The decisions seek to equalize the lender's rights to protect its loans and collateral with the borrower's rights to the integrity of its business operations. While lenders once drew comfort from the detail of their loan agreements, they now wonder what unexpected landmines exist in them to turn comfortable security interests into judgment liabilities.

A. Theories of Liability Based on Relationships.

The common thread to the cases on lender liability appears to be the lender's conduct and its motivation. We have already

discussed the scrutiny afforded lenders' actions to determine good faith and fair dealings. We have found that a lender's involvement in the affairs of the borrower can result in the imposition of liability for failing to act in good faith. As the lender's realm of control expands, the facets of its relationship with the borrower expand and that expansion may give rise to a variety of theories of liability for the lender in the workout context.

1. Instrumentality Theory.

Most lenders have no desire to enter into the control of the businesses to which they lend money. So long as the borrower's financial condition is healthy and the lender's loan is secure, the lender is usually content to allow the borrower to conduct its own affairs. However, if the borrower experiences a material deterioration in financial position, or default under its loan agreement, the lender will at least begin to monitor the situation facing the borrower in order to protect its loan and collateral. However, the total domination of a lender over a borrower, which causes harm to the borrower or other creditors, will give rise to the liability of the lender.

For example, in Krivo Industrial Supply v. National Distillers and Chemical Co.,⁷ the lender sent employees to the business of a borrower to act as its internal auditors

and production consultants. Furthermore, the creditor often exercised veto power over the disbursements of the borrower. And finally, it gave advice and monitored production of the borrower. The court found that the lender had total control over the borrower and held the lender liable for damages.

2. Principal/Agent.

If actual, total control is the sole measure of liability, probably few banks would be ensnared. However, other theories of liability impose less stringent standards of conduct. Some courts hold that creditor liability results when substantial control over the debtor's affairs occurs under a theory of principal/agent. Substantial control can be implied from a combination of measurable actions subject to more than one interpretation. For example, in A. G. Jensen Farms Co. v. Cargill, Inc.⁸, a financing arrangement which allowed preferential rights in the lender, lender's full discretion to discontinue financing, restrictions on the borrower's ability to enter into mortgages or issue stock or pay dividends, the lender's conduct of on-site checks and audits, the close and constant advice and recommendations to the borrower concerning the conduct of operations, and the lender's subjective feelings about the borrower's need for strong parental guidance, resulted in the court holding that a principal/agent relationship existed between the lender and the borrower.

3. Inadvertant Partnership.

We have seen that total, actual control and substantial control can give rise to lender liability. Under some legal theories, a lender can find itself liable simply by stumbling into a set of facts which gives rise to cause of action known as an inadvertent partnership. Liability occurs when a court determines that two or more persons are co-venturers in an enterprise. Generally, courts are influenced by the intent of the parties, the presence or degree of control over the business and the existence of profit sharing in some form. The pertinent questions to ask are: who made the decisions, whether a written agreement exists on the question of partnership, whether both parties contributed services and how much, who held title to the property, and what alternative motives existed other than partnership to explain the transaction. Several federal and out of state cases have implied a partnership where the parties did not subjectively intend a partnership'.

It seems clear that as control over the business diminishes, the question of whether there is a partnership turns significantly on the motivation of the parties and in the conduct of their relationship. Nevertheless, a fact finder will look to the activities of the partner to infer intent or motivation.

B. Tort Liability

While the theories of liability based on relationships can at times be inadvertent, certain conduct clearly rises to the level of a tort or the breach of some fundamental responsibility to another party. The Farah¹⁰ case demonstrates an example of what to do to incur liability. Most of the findings of the court in Farah spring from what can be termed misconduct on the part of the lender. The lenders in Farah were held liable for \$20 million dollars of damages in connection with their conduct

1. The Facts of Farah. On February 14, 1977, Farah Manufacturing Company ("Farah") and a group of lenders renegotiated a \$22 million dollar loan agreement. One of the terms added by the lenders was a management change clause. The clause provided for default under the loan agreement when any change in the office of the president or the chief executive officer of Farah or any other change in executive management of Farah was deemed by two banks, for whatever reason, to be adverse to the interest of the lenders.

Only a month later, the deposed chief executive officer of the corporation made a presentation to the Farah Board to be reinstated. At least one of the lenders strongly opposed Farah's return to power. However, at a lender's meeting a week after his presentation, the lender group failed

to decide whether to call the loan if Farah were elected as the CEO. In fact, the evidence fairly persuasively showed that no decision was made to declare the default. Nevertheless, a day after the lenders' meeting, they delivered a letter to Farah's board and met with various board members in an attempt to defeat Farah's bid for reelection and to install Mr. Conroy as the CEO. Conroy was already a director of Farah and a director of State National, one of the lenders. The day following the meeting and the delivery of the letter, the lenders met with one of the Farah board members who was deemed by the lenders to be the "swing vote" for Farah. The evidence indicated that the lenders' representative threatened default and bankruptcy, with table pounding added for emphasis. Consequently, Conroy was elected CEO and another delegate of the lenders was elected to Chairman of the Board. In the months that followed the lenders nominated and approved other board members. Furthermore, a consultant nominated by the lenders and hired by Farah later became the CEO of Farah. The consultant was eventually removed as CEO, but not before auctioning off valuable Farah assets and applying the proceeds against the loans of the lenders. Finally the evidence indicated that the lenders took an active interest in a proxy fight to oppose Farah's ultimate take-over of Farah.

2. The Fraud Claim. Fraud occurs when a person makes a material misrepresentation with knowledge of its

falsity, or when he makes a misrepresentation recklessly and without knowledge to the truth but states it as a positive assertion that the speaker intended reliance that there was reliance and that there was injury.¹¹ The lenders satisfied every element.

The lenders in the Farah case were held liable for their failure to candidly explain their intention whether to declare a default if Farah were reelected as CEO. They were bluffing and it backfired. The letter which was delivered was capable of two interpretations, one of which was false; that is, that the loan would be declared in default if Farah was elected. The court found this to be actionable fraud.

3. Economic Duress. A lender may be held liable for economic duress when it threatens to do some act which it has no right to do and which overcomes the free agency of the party who is being threatened and causes him to do something he is not legally bound to do.¹² The damages must be proximately caused by the threat, and the person threatened must have no present means of protection.

In the Farah case, the court interpreted § 1.208¹³ of the UCC to obligate parties to a loan agreement to deal in good faith with one another by drawing a comparison to the note acceleration rules referenced there.

Since duress frequently turns upon motive, it was proper for the court to look to the reasonableness of the

lender's action. As in all of the cases, the court's first inquiry was whether the borrower was in default. The court found that Farah was not in default at the time that the warnings were given and the misrepresentations made. The assets of the corporation were more than sufficient to pay the obligations of the lenders and the court had no trouble finding that there was no justification for the warnings concerning the default since the lenders had previously decided not to declare a default or had reached no decision. In other words, the court looked closely and found that the lenders were advancing their own economic interests by forcing the victim to choose between succumbing to the threat or facing the loss of the entire business. For even though the loans were fully secured, the company would have had to liquidate to pay the loans. In the face of legitimate options under the loan agreement, the lenders nevertheless chose an illegitimate option, and they were required to pay for it.

4. Tortious Interference. Had the Farah court not been able to find liability in the lenders on the basis of fraud or duress, the court alternatively would still have held them liable for tortious interference in the management affairs of Farah. The interference giving rise to liability was the installation of a State National Bank director as CEO for Farah, the locking out of Farah, the prevention of the election

of two persons to the board who supported Farah, the installation of a bank affiliated person as Chairman of the Board of Farah and the interference with Farah's efforts to use the proxy system.

Farah seems to expand the traditional interference liability beyond mere interference with an existing, valid contract. In Farah, no specific contract existed. Nevertheless, the court found that the lenders had interfered with the borrower and its shareholders' rights of corporate governance. It is not unreasonable to assume that the court's finding was based on the dominating relationship existing between the lenders and the borrower.

5. Damages. Why do we care if a cause of action against a lender is based on a contract claim or a tort claim? The law in Texas prevents the imposition of punitive damages for a simple breach of contract action. However, due to the lender's torts in Farah, Farah was allowed to recover lost profits and other damages suffered by the business after the torts occurred, even though other causes could have been attributable to the source of the damage. The measure of damages in tort cases has been expanding in recent years and may continue.

6. Prima Facie Tort Theory. In a case similar to Irving Trust, a Missouri court recently found a lender liable

for wrongfully calling a demand note. The liability was founded upon a theory known as prima facie tort theory. One who intentionally causes injury to another is subject to liability to that person for that injury if his conduct is not justifiable under the circumstances.¹³ In the Bronfman v. Centerre Bank of Kansas City¹⁴ case, the borrower was notified that the lender was calling a demand note due in sixty (60) days. However, well after the note would have been due, the lender continued to advance funds. Then, on short notice, the lender made formal demand on the note and shortly thereafter the assets and accounts receivable were turned over to the lender for liquidation. The borrower asserted at trial that the lender's conduct was performed with an intent to injure him even though the conduct was lawful. The jury agreed and found the lender liable for \$1.5 million dollars in actual damages and \$1 million in punitive damages. However, the Court of Appeals disagreed and refused to rewrite the agreement between the parties to include a provision requiring good faith upon demand. Therefore, the bank escaped liability because of the language of the documents covering the transaction.

This theory is generally considered to be the broadest theory of lender liability; it is the dragnet of the business torts. The key element is "intent to injure." However, the courts seem reluctant to extend liability on these grounds.

And, as in the other cases we have discussed, it may be the lender's course of dealing with the borrower which may impose liability on the lender.

C. Equitable Subordination. Another way that control can land a lender in trouble occurs after the debtor has declared bankruptcy. Generally speaking a lender that exerts substantial control over a debtor in bankruptcy may find its claims subordinated to the claims of the other creditors and therefore will not be paid until those other claims are satisfied. Likewise, such relationship may establish the relationship of the borrower and the debtor as affiliates as defined by the Bankruptcy Code,¹⁶ therefore imposing the longer preference period of one (1) year on the transactions between the two.¹⁷

So far, the courts have not implied that an attempt to workout a reorganization outside of the official sanctions of the Bankruptcy Code is grounds for equitable subordination of the lender's claims. In In re W. T. Grant Co.,¹⁸ the bankruptcy court refused to subordinate various claims of the lenders to those of other indenture holders who alleged that the bank's claim should be subordinated because they loaned money to the debtor at a time when they knew it to be insolvent. Once again the determination turned on the factual question whether the lender's loans were secure. The court

commented that the debtor had continued to show a substantial net worth throughout the relevant time period. Furthermore, it was established through evidence that management's independent judgment was still being exerted over the affairs of the debtor at the time of the loans in question.

The court allowed that the simple proffering of advice, even advice with an implicit threat, is not enough to require equitable subrogations. To prevail, the complainant must show that the lenders acted solely for their own benefit taking into account the reasonable belief that their claims constituted a senior indebtedness as to the debenture holders.

D. Securities Law. Liability under the Federal securities laws is most often derivative liability springing from a lender's control. Generally, a lender can be held liable for aiding and abetting a violation of securities laws or for being a "controlling person" of the entity that violates the acts. A lender can be held liable for aiding and abetting violations of the securities laws if it knows that the primary party has violated securities laws and substantially assists in achieving the primary violation. With respect to the "controlling person", the plaintiff must establish that the lender exercises control over the corporation in general, including the power to control the specific transaction or activity upon which the primary securities law violation was

predicated. It is the power to control, not the exercise of the power, which gives rise to liability.

The courts have recognized that a primary lender almost always possesses a measure of influence over a corporation which normally increases if the corporation becomes delinquent in its payments. Therefore, the imposition of the duty is not reasonable until the lender exercises its power by becoming involved in the general operations of the corporate borrower.

Concerns about securities law violations should arise when the workout plan involves issuance of securities to third parties or when it involves the lender acquiring an equity position in the borrower. Lenders should avoid facilitating the distribution and sale of securities, and they should avoid acting on non-public information of a publically-traded borrower.

IV. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT --

"THE MOB SENT ME TO COLLECT"

The Federal Racketeer Influenced and Corrupt Organizations Act ("RICO")¹⁰ makes it unlawful for any person associated with an enterprise which is engaged in interstate commerce to conduct the affairs of the enterprise "through a pattern of racketeering activity." The racketeering activities of greatest concern to lenders are embezzlement, mail fraud and

fraud on the sale of securities. Any person whose business or property is injured by reason of a violation of the RICO statute may recover three times the damages he sustained as well as the cost of suit and reasonable attorney's fees. Conviction under the criminal provisions of RICO may result in forfeiture to the United States of any interest he has acquired or maintained as a result of the violation of RICO. The United States Supreme Court has held that "any interest" not only covers interests in the enterprise but also includes profits and proceeds resulting from racketeering activities such as committing arson to defraud insurance companies.²¹

Everyone understood that RICO was intended to capture the Al Capones of organized crime. However, much to the shock of bankers and other legitimate businessmen, imaginative lawyers are using RICO to assert or enhance its ordinary contract and tort claims against lenders.²² In other words, RICO has been extended to impose liability for ordinary business operations.

Lenders have been held liable for RICO violations when a borrower or class of borrowers assert and prove that a lender has overstated its prime rate and charged excessive interest on its loans.²³

The RICO claims would set forth that the bank represented that it was charging a rate that was tied to the lowest prime

rate available from that bank (as it fluctuated from time to time), that the bank knew that the rate that it was charging the borrower was not tied to the lowest rate and that by promising the borrower the prime or lowest rate the bank intentionally deceived the borrower. This can establish a scheme to defraud a class of borrowers.

Few precedents exist in Federal RICO litigation, but those which do exist are believed to broaden civil actions under RICO. Absent Congressional action, commentators expect that RICO may well be used by private litigants and bank regulators to address serious cases of bank fraud, mismanagement and other ordinary business dealings including, perhaps, conduct occasioned during loan workouts.

V. FEDERAL TAX LIABILITIES--
"WE CAN'T PAY OUR OWN TAXES,
MUCH LESS THEIRS"

A lender advancing funds to a debtor in trouble to make payrolls can find itself liable for withholding taxes to the federal government if they are not paid by the debtor.²⁴ Similarly, if a lender exerts various types of control over the accounts of the borrower and the borrower voluntarily, consciously or intentionally fails to pay the withholding tax, the lender may be found jointly liable for the taxes and penalties.

In Commonwealth National Bank of Dallas vs. The United States,²⁵ the bank honored the payroll checks being

written by Concrete Pan Forms, Inc., a concrete subcontractor. However, the bank refused to honor the checks that were written to cover federal employment taxes. The lender's CEO had unilaterally, and on the instructions of the borrower's CEO, held the checks written to pay federal employment taxes. The court held the lender responsible since it knew that the federal employment taxes were not being paid and he frequently conferred with the CEO of CPF in order to decide which creditors were going to be paid.¹⁶

Obviously a lender should be wary of financing a borrower's payroll, particularly if the borrower's financial position has deteriorated. If the lender directly or indirectly finances the net payroll of a borrower without causing the payment of the withholding tax portion of the payroll to the IRS, the lender can be held jointly liable for the taxes. This would be true even in the situation where the lender has only veto power over the borrower's payroll account or honors overdrawn payroll checks.

If a lender has the power to determine how funds will be spent through controls on payroll or other accounts, which bills will be paid and when, or to advance funds for net payroll, then a lender may be required to pay the debtor's employment taxes.

VI. REDUCING THE RISKS--
"THERE'S NOTHING WORSE THAN A
MONDAY MORNING QUARTERBACK"

Because so many of the cases involving lender liability seem to turn on the particular fact situation in each case, it is difficult to state any definitive rules or guidelines to avoid or reduce the risk of liability. The following principles may help to establish some broad guidelines to keep in mind during the workout process:

A. Accurately Assess The True Financial Condition Of The Borrower. A thorough assessment of the borrower's true financial condition can determine whether a workout is appropriate.* The borrower's financial condition in relation to its obligations to the lender appears to be crucial to the determination of liability resulting from control. Furthermore, familiarity with the assets of the corporation in trouble permits the lender to better assess whether it can be adequately secured during a workout.

B. Identify The Strengths And Weaknesses Of The Contractual Agreements Between The Borrower And The Lender. First and foremost, the loan documents should govern the rights and obligations of the parties in a lender's relationship with the borrower. As we have seen, this relationship can be

modified by subsequent conduct on the part of the lender. However, to chart the course for the workout negotiations, it is important to understand the rights and responsibilities of each party. This analysis will help the lender to identify any potential loopholes in its documentation which might diminish its legal rights. A careful review might prevent an inadvertent assumption of liability caused by misrepresenting the lender's rights to the borrower. Furthermore, in the context of a loan workout, certain contract terms will be renegotiated based on the varying bargaining powers of the lender and the borrower. Commonly a lender might wish stronger cross-collateralization, more detailed reporting, cross-default provisions, and additional collateral.

C. Determine The Entire Course Of Dealings That The Lender Has Had With The Borrower, Its Officers And Any Of Its Affiliates. This analysis should identify potential disadvantages in exercising control over the borrower's businesses. For example, if the solvent parent of the corporation could be placed on the hook through cross-collateralization and cross-default clauses, the control question may be postponed or entirely avoided. In addition, the review of the course of conduct should clarify the achievable objective of the workout. The relationship should also be reviewed in the context of the usual policies followed

by the lender in workouts for loan restructurings. All of these considerations shed light upon the lender's motivations--what they are and what they should be. Realistically determine the objectives of the workout and determine these objectives in consideration of your obligation to act in good faith to protect your interests and to minimize damage to the borrower.

D. Examine The Professionalism Of The Loan Officers Predominantly Responsible For The Loan. As the Farah case and others seem to suggest, personal animosity, loss of perspective, or indecision by the lender or its loan officers can demonstrate not only a motivation which is contrary to the best interests of the borrower, but also to the lender. At all times, notes of meetings and internal memoranda should be written with a view to future discovery when the lender has undertaken to negotiate a workout.

E. Enter Into A Workout Negotiation Agreement. Liability may be avoided or reduced by entering into a workout negotiation agreement. None of the cases have reflected the existence of such an agreement. Its terms should include the admission and description of default (or danger thereof). The parties should agree to negotiate to rework their obligations as well as settle all other claims and disputes. The agreement should explicitly disclaim oral commitments, with both parties

agreeing that all obligations will be reduced to writing before they are enforceable. Include in the agreement any statements which would support a conclusion of equal bargaining and arms-length transaction (e.g. each party is represented by legal counsel of its choice.)

F. Remember The Proper Lines Of Authority.

(1) Do not threaten something that you do not have the right or intention to do. In the Farah case, much of the liability stemmed from the lenders' misrepresentation concerning its determination not to declare the borrower in default, although the lenders threatened to do so.

(2) Draft your management clauses, if you must have them, using more objective and definite standards so as to permit objective proof of what constitutes default.

(3) Be aware that the most sensitive time for incurring a tort liability (versus a breach of contract liability) arises between the time of the borrower's financial difficulty and the time of default and foreclosure.

(4) Avoid involvement in the day to day business of the borrower and control of decisions committed to corporate governance. Avoid:

(a) Equity involvement in the borrower. Preferred stock, convertible debt or warrants exercisable on default are far preferable to voting stock in the lender;

(b) Influencing the choice of directors, officers or employees;

(c) Influencing salaries or wages of the borrower's officers or employees;

(d) Lending money, covering overdrafts, or refusing to honor checks in connection with payroll accounts;

(e) Sending lender employees to borrower's premises to monitor and control activities.

The advice and help you give during workout negotiations may be considered control over the borrower when the workout fails.

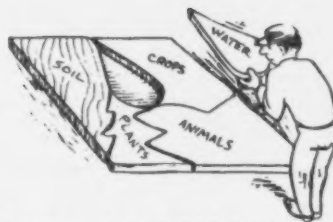
Footnotes

- ¹ English v. Fischer, 660 S.W.2d 521 (Tex. 1983).
- ² La Sara Grain Co. v. First National Bank of Mercedes, 673 S.W.2d 558 (Tex. 1984).
- ³ Id. at 563.
- ⁴ State National Bank of El Paso v. Farah Manufacturing Co., Inc., 678 S.W.2d 661 (Tex. App.--El Paso 1984, writ dism'd by agr.).
- ⁵ Tex. Bus & Com Code § 1.208 (Tex. UCC)(Vernon 1968).
- ⁶ K.M.C. Co., Inc. v. Irving Trust Co., 757 F.2d 752 (6th Cir. 1985)
- ⁷ Krivo Industrial Supply Co. v. National Distillers and Chemical Corp., 483 F.2d 1098 (5th Cir. 1973)
- ⁸ A. G. Jensen Farms Co. v. Cargill, Inc., 309 N.W. 2d 285 (Minn. 1981)
- ⁹ Rosenberger v. Herbert, 232 A.2d 634 (Pa. 1967); Minute Maid Corp. v. United Foods, Inc., 291 F.2d 577 (5th Cir. 1961) cert. denied 386 U.S. 928 (1961); Connor v. Great Western Savings & Loan, 447 P.2d 209 (1968); cf. Coastal Plains Development Corp. v. Micrea, Inc., 572 S.W.2d 285 (Tex. 1978).
- ¹⁰ 678 S.W.2d 661
- ¹¹ Custom Leasing, Inc. v. Texas Bank & Trust Co., 516 S.W.2d 138, 142-43 (Tex. 1974)
- ¹² 678 S.W.2d at 684
- ¹³ Tex. Bus. & Com. Code Ann. § 1.208 (Tex. UCC)(Vernon 1968).
- ¹⁴ Bronfman v. Centerre Bank of Kansas City, 705 S.W.2d 42 (Mo. Ct. of Ap.--1985).
- ¹⁵ Restatement (Second) of Torts § 870
- ¹⁶ 11 U.S.C.A. § 101, et seq. (West 1979).

- 17 11 USC § 101(28)(E) and § 547(b)(4)(B)
- 18 In re W. T. Grant Co., 699 F.2d 599 (2nd Cir. 1983)
- 19 Securities Act of 1933, 15 U.S.C.A. § 77a, et seq.;
(West 1981); Securities Exchange Act of 1934, 15
U.S.C.A. § 78a, et seq. (West 1981).
- 20 18 U.S.C.A. § 1961, et seq. (West 1984).
- 21 Sedima, S.P.R.L. v. Imrex Co., Inc., ____ U.S. ____,
105 S. Ct. 3275, 87 L. Ed. 346 (1985).
- 22 Owl Construction Co., Inc. v. Ronald Adams Contractor,
Inc., 727 F.2d 540 (5th Cir. 1984); Lode v. Leonardo,
557 F. Supp 675 (N.D. Ill. 1982).
- 23 American National Bank and Trust Co. v. Haroco, 747
F.2d 384 (7th Cir. 1984), aff'd per curiam, ____
U.S. ____, 105 S. Ct. 3291 (1985); Kleiner v. First
National Bank, 526 F. Supp. 1019 (N.D. Ga. 1981);
Morosani v. The First National Bank of Atlanta, 539 F.
Supp 1171 (N.D. Ga. 1982), 703 F.2d 1220 (11th Cir.
1983).
- 24 I.R.C. § 3505 (West 1979); I.R.C. § 6672 (West 1967).
- 25 Commonwealth National Bank of Dallas v. United States,
665 F.2d 743 (5th Cir. 1982).
- 26 Id. at 747

Linking Agriculture and Resource Conservation Programs

Exhibit I



• Putting it all together •

MULTIYEAR ACREAGE SET-ASIDE: A PRESSING NEED

Current USDA farm commodity programs and set-aside requirements are subject to annual change or modification. Due to the unpredictable nature of these programs, farmers lack reasonable planning horizons necessary for properly managing set-aside acreages and often are reluctant to invest in long-term vegetative cover practices. In 1987, 54.4 million acres (23%) of all commodity base croplands were idled under annual set-aside and diversion programs (see Tables 1 and 2). Research has indicated that the vast majority of annual set-aside lands do not have adequate vegetative cover to prevent soil erosion, protect water quality, enhance fish and wildlife resources, or improve the structure and quality of the land.

RECOMMENDATION: Establish protective vegetative cover on set-aside acreages by converting to multiyear (3+ yrs.) contracts with adequate incentives to encourage enrollment by farmers.

BENEFITS: Soil. Studies show that up to 60 percent of annual set-aside lands are left unseeded or summer fallowed (tilled). As few as 6 percent had adequate protective cover (i.e., grasses and/or legumes) necessary for preventing soil erosion. Establishment of multiyear vegetative cover can reduce soil erosion rates from 20-30 tons per acre per year to 2 T/ac/yr. Grasses and legumes also build and improve overall soil fertility, tilth and conditions for soil organisms.

Water Quality. Without multiyear vegetative cover, annual set-aside acreages have a high potential of contributing to surface and groundwater contamination. Research indicates that on unseeded and/or fallow lands excessive nitrate leaching into groundwater can occur at a rate two times that of acceptable drinking water standards. Establishment of multiyear vegetative cover can help reduce substantially human health risks associated with hazardous pesticides, nutrients and other materials on set-aside lands.

Fish. Suspended solids, silt and chemicals from annual set-aside lands degrade stream habitats and have the potential of severely limiting fish communities. Multiyear vegetative cover that controls soil erosion also would help reduce stream turbidity, improve dissolved oxygen levels, and enhance aquatic spawning and rearing habitats for fishes and their food organisms.

(more)

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Wildlife. Studies have indicated that nesting cover--the most important factor limiting ground-nesting wildlife--is absent, poor or only in fair condition on 80 percent of annual set-aside lands. Wildlife populations have the potential to respond remarkably to protective cover on multiyear set-asides. For instance, a computer model for Minnesota predicts that if annual set-aside lands were converted to multiyear vegetative cover with mowing restrictions, ring-necked pheasant populations in the state would increase from 1 million to 7 million over the next 5 to 10 years.

Economic. During the 1987 crop year, the federal government paid agricultural producers participating in annual set-aside programs \$14.1 billion in farm program payments that yielded few conservation benefits. By converting annual set-aside programs to multiyear acreage set-asides with protective vegetative cover, substantial public benefits would be obtained through reduced soil erosion, improved water quality, enhanced wildlife populations, enriched lands, expanded recreational opportunities, and improved economic returns for landowners. In addition to these conservation and economic benefits, multiyear acreage set-asides also would reduce USDA administrative costs, compared with a series of one-year contracts.

Although no specific figures are immediately available to single out direct economic benefits of multiyear acreage set-asides, USDA reported in The Second RCA Appraisal: Analysis of Condition and Trends (1987) that nationwide:

- Up to \$17 million in annual savings are possible by reducing rates of erosion that result in loss of soil productivity.
- Additional annual savings of between \$3.2 billion and \$13 billion could be obtained by reducing offsite damages associated with water erosion and run-off from agricultural land.
- Increasing water quality by reducing chemical and sediment-associated contaminants can save up to \$126 million every year in treatment costs.
- Reducing sediment damages to water storage facilities, conveyance areas, and transportation systems can save up to \$2.4 billion annually.
- Economic value of commercial and recreational fisheries could be increased by as much as 40 percent by improving water quality and controlling erosion.
- Hundreds of millions of dollars of economic activity could be generated from wildlife-associated recreation. For example, pheasant hunters increased 250 percent and contributed \$60 million annually to South Dakota during the Soil Bank program in the 1950-1960s.

Multiple-year acreage set-asides would help capture a significant part of these and other benefits.

Senator FOWLER. That's a good idea. I thank you.

Has there been any indication from Farmers Home that they are in their implementation of any regulations in restructuring loans of farmers putting land into permanent easements is being done and is working? Did you hear anything about that?

Mr. BERGER. You mean before they are forced to foreclose on those lands, the lands that are still being operated?

Senator FOWLER. I'm thinking on the other end, where you've got just short of foreclosure, where part of their debt payment is the offering of a permanent easement of erodible land as a part of the loan restructuring and the debt?

Mr. BERGER. I don't have any information on that part. I believe that they are very close, and are working with States and agencies to transfer the deed restriction on foreclosed lands. That's available under the conservation provision to available loans.

Senator FOWLER. Mr. Berger, have you noticed any increase in wildlife numbers since the 1985 farm bill? Does your group think there has been for whatever reason?

Mr. BERGER. Our focus is on waterfowl, and the fall flight forecast has been up but marginally. Breeding populations have been up again marginally.

Senator FOWLER. Did you see all the money I put you in the ACWR legislation in the Arctic Coastal Wildlife Reserve.

Mr. BERGER. We are very appreciative. Anytime money flows our way to do habitat work, we are very appreciative.

Senator FOWLER. That money is in there. Whether it stays in there or not, we'll see, but it's in there right now.

Mr. Moss, I'm sorry I missed your testimony but I will read it carefully. You may have addressed this or not. But what incentives, in your opinion, would be necessary, financial I guess primarily, to encourage farmers to plant hardwoods?

Mr. Moss. I think if you extend the rental payment period of time from 10 to 15 years that will be one way. A one-time bonus like the corn bonus would be another way. These two items would help.

Senator FOWLER. Do you think we are meeting the long-term economic needs now in softwood timber?

Mr. Moss. Softwood timber is generally being grown in the Southeastern States, and comparing that to CRP, we're doing most of CRP planting in the South. However, I believe we'll have a shortfall in probably 2020, something like that. So in that respect, we are not meeting it on a long range basis.

Senator FOWLER. Well, let me put it another way. In your opinion, what areas of the country are in need of some kind of incentives to participate in the Conservation Reserve Program?

Mr. Moss. I think your Midwestern and Western States need some help out there. ASCS could pay for some kind of watering and shelterbelts and drainage filter strips. I would like to say that Georgia is leading the Nation in CRP, Mr. Chairman. I would tell your State Forester, John Mixon, to look out, Mississippi is right behind him, but we're both doing quite well right now.

Senator FOWLER. Wonderful. Thank you for that report.

I yield to Mr. Conrad.

Senator CONRAD. I'd be interested if we could get a response on the position that was taken by Milton Hertz this morning on using the "failure to fully comply" provisions in the penalty part of dealing with swampbuster and sodbuster. What would the reaction be of those of you who are representing the organizations in this panel?

Mr. BALES. Our forte is good land management. There needs to be a highest and best use analysis done on marginal land before any workout is done. During this analysis many studies will show that this land or some marginal land, perhaps part of a farm, needs to be converted to wildlife habitat. That would be the highest and best use for the public, for the taxpayer, and for the farmer himself.

There is no real conflict between good farming practices and wildlife management, but some of the technology and the plants that are being developed are not being implemented. There is a barrier, a financial barrier, between the old conventional methods and the best management practices which are three mortgage payments away.

In many cases, we would recommend offsetting or recreating wetlands offsite. We would support Mr. Moss' position that a lot of the wetlands that are under cultivation now need to be converted into wetland and hardwood forest or mixed hardwood and softwood forest.

There's a feasibility study that's already been done that will show that this type of mixed forest and wildlife habitat is more profitable and will add more value to the land than farming it for soybeans. So maybe we need to relook at some of our wetlands.

Senator CONRAD. Would you support use of the Conservation Reserve Program for some of these wetlands?

Mr. BALES. Absolutely.

Senator CONRAD. You would support a bill. Senator Boschwitz and I have introduced a bill that would make certain of these wetlands eligible for Conservation Reserve. We think that would be one way of relieving a lot of the pressure that's out there in addition to this dealing with the penalty provisions in a way you don't drop dead on the first infraction. You would be supportive of that?

Mr. BALES. Absolutely.

Senator FOWLER. Mr. Baron, tell Senator Conrad what you said about the bill with your caveat. While he was gone you supported it, but you ought to give him your caveat also.

Mr. BARON. I encouraged the introduction of it. I can read you exactly what I said. I would like to do that.

It's indeed a compromise that will offer advantages to farmers and the environment alike. We must, however, not enact such legislation in tandem with any weakening of the provisions of swampbuster. It would be indefensible to offer temporary protection for wetlands on the one hand and subsidize drainage on the other.

Senator CONRAD. Let me make this clear. Under everything we're talking about, so there's no misunderstanding, we're not talking about draining additional wetlands. That's not the position we're taking. We are saying that there are two problems. The penalty problem which I think is reasonable and the second is the nui-

sance spot, and I really think a big part of our problem here is not understanding what each other is saying.

I say nuisance spot and you think one thing, and you say it and I think another. And that's why I invited some of the groups this morning out to the State. I really think we could make some real progress if some of you would come out and we would go right to the sites with some of the farmers I've gone with and take a look at some of these situations. I think we would just clear up a lot of this very quickly.

Mr. BARON. I endorse bringing individuals into the great State of North Dakota. I am a lifelong resident of that State. It will also amaze them to see the high use of temporary wetlands by migratory birds, and I welcome them to look at this high use so they can see both sides of the story.

Senator CONRAD. Yes, and I think that would be good. When we are talking about temporary wetlands and nuisance spots, a lot gets lost in translation, and I think if we were out there, we would probably get a meeting of the minds much more rapidly.

Senator FOWLER. I know better than to get into this discussion, but I'll do it anyway. Since I've never seen, on the ground so to speak, outside of a fine exhibit down at the Smithsonian live prairie potholes, I assume that for wildlife protection, waterfowl protection, that it is better in the prairie pothole region that we've been discussing in your State and neighboring States, Senator Conrad, I assume that one of the problems is that it is better to have, just for waterfowl protection, it's better to have 10 1-acre spots where they land than to have 1 10-acre spot. Is that right? If I am wrong, tell me. Is that one of the policy problems that we've been discussing?

Mr. BERGER. I hesitate to make a general statement like that because waterfowl rely on a variety of habitat types. Yes, the small wetlands are very important. They last through the breeding season for the nesting nearby and for brood rearing, and they also need larger water for molting and staging before the fall flight.

So a variety. As with any wildlife a variety of habitat types are usually required, and the more diverse those can be than the more accommodating the areas are to the entire population.

Senator FOWLER. Well, to be as specific as possible, and we've asked this of other panels, what would be the impact on wetlands, and anybody here, in your expertise if we excluded from swampbuster by exemptions, in the farm act, exemption for wetlands that had been cropped during any growing season between 1981 and 1985, but not converted before December 1985, whatever the date is in the bill?

Mr. BERGER. I think swampbuster, as it is written now in dry years, allows those lands to be cropped as they always have been. Waterfowl need wet years to produce in abundance, and when they do, they rely on small wetlands and not only the ones that we're shown the picture of, not only, but all sizes, and to eliminate an entire class of those wetlands would, to say the least, not be the best situation waterfowl could hope for.

Mr. BARON. We would be eliminating between 20 to 30 percent of those wetland basins out there. When you consider that 60 percent of the original wetland base is already gone, we're talking about

quite a significant number, between 200 to 300,000 acres in the Dakotas.

Senator FOWLER. I believe your testimony was that 60 percent of the wildlife habitat in North Dakota is already gone, and we're talking about the other 40 percent. Is that what you said?

Mr. BARON. That's correct.

Senator FOWLER. Any other questions?

Senator CONRAD. Mr. Chairman, if I might, if one reads the law on the exemptions, section 1222 of the law, paragraph (c) says, "The Secretary may exempt a person from section 1221 for any action associated with the production of an agricultural commodity on converted wetland if the effect of such action, individually and in connection with all other similar actions authorized by the Secretary in the area, on the hydrological and biological aspect of wetland is minimal."

Would the gentlemen who are members of the panel tell me what they think that means or does it have any meaning? For example, I provided the photograph of what I would call a nuisance spot.

Mr. Chairman, that's what I would call a nuisance spot.

I presented the studies that indicate, I think very clearly, that these are not critical at all for habitat. Does that provision have any meaning? And if so, what is it?

Mr. BARON. Senator Conrad, Mr. Chairman, as I stated earlier in my oral statement, with me today is Janice Goldman-Carter, counsel for the National Wildlife Federation with our fisheries and wildlife division. Since I am not a lawyer, I would like her to interpret this if that's all right with you.

Senator CONRAD. That would be fine.

Ms. GOLDMAN-CARTER. This is going to be easy because it was written in the committee report of the House Committee on Merchant Marine and Fisheries and that's why I'm offering to stand up here and do this job. If you were to ask us what we think the minimal effect exemption means there really couldn't be a better response than the committee language that was put forth then, and I'll try to pick and choose what I quote to you.

Here it says, "In speaking about the minimal effect definition," it says, "it is to be applied with great caution and recognition that most of this country's remaining wetlands are of considerable value. The provision is intended to exclude from this act actions that are truly minimal both individually and cumulatively in their impact on wetlands." It goes on at length.

But to me, what I think you're looking for and particularly important here, is that you go down in that paragraph where it says that the committee anticipates that USDA will rarely use this provision and then only if in full consultation with the Fish and Wildlife Service, it is determined that the area to be destroyed is of minimal or no significance to the public interest. In situations where a producer destroys a wetland and seeks to be excluded from the provisions of this act after the fact, the burden of proof that no public values were lost shall rest with the producer.

That tells me, and I think is consistent with our position, that if a producer can come to SCS in consultation with the Fish and Wildlife Service and support the proposition that there is really

minimal or no value remaining to this wetland in terms of hydrology, ground water recharge, flooding, et cetera, or in terms of biology, duck production, et cetera, then that is what the minimal effect exemption is for, and it would apply to those situations.

Senator CONRAD. Could I just pursue this a moment, Mr. Chairman?

Senator FOWLER. Yes.

Senator CONRAD. Do you know what the language that flowed out of the Merchant Marine Committee applied to? It was the House version of the bill, was it not?

Ms. GOLDMAN-CARTER. It was related to the House version of the bill just as was the House Committee on Agriculture report.

Senator CONRAD. Right. And in the House bill, I think we've provided clearly in the legislative history and I don't think anybody would dispute this, that land that had been cultivated prior to the date was specifically grandfathered, was it not?

Ms. GOLDMAN-CARTER. Well, there were a range of exemptions, and I think you really have to look carefully at this, and in all due respect, I think that the analysis that was done by the congressional staff that you have alluded to relies primarily on the House report. The Senate version and the House version contain a number of different exemptions, and the House version included a broad exemption for cropped wetlands. It also included a narrower exemption for converted wetlands, a narrower exemption for natural conditions, and a minimal effects exemption.

The Senate version of that bill contained all those exemptions as well except for the broad exemption for cropped wetlands.

Senator CONRAD. Right. Cropped wetlands translated here would be wetlands that had previously been cultivated?

Ms. GOLDMAN-CARTER. Anytime between 1981 and 1985.

Senator CONRAD. And under the House version those would have been exempt.

Ms. GOLDMAN-CARTER. Under the House version, that's right.

Senator CONRAD. And the language that flows from this language, which came out of the Committee on Merchant Marine and Fisheries, was applied to that underlying House bill.

Ms. GOLDMAN-CARTER. Well, that's correct, but it was——

Senator CONRAD. Well, I just think you got to read this material in context, and the context was one in which the House made very clear, I think, cultivated land, prior cultivated land was not included and that this Committee on Merchant Marine and Fisheries language was in that context.

Ms. GOLDMAN-CARTER. Senator, I think there were a number and we've gotten some agreement on this from staff. If you really look at, and if you look at our analysis of the legislative history, I think it shows that in the House version there were a number of these exemptions that really were internally inconsistent. One was the minimal effect exemption. Still that exemption went into the final law unlike the exemption for cropping history, and so the language still has some relevance to congressional intent on minimal effect.

Senator CONRAD. Let me ask you on a specific. I've shown you this picture. Do you have any judgment on whether that would be considered a minimal effect?

Ms. GOLDMAN-CARTER. That question goes to whether or not that particular wetland has hydrologic and biological value and I would like to refer that question to Dr. Linder because I think he has a definite view on what that wetland provides in terms of both hydrologic and biological value.

Dr. LINDER. As I understand the question, does this wetland in the photo have wildlife and hydrological values?

Senator CONRAD. That isn't quite the question, no, sir. The question really is, in the section of the law that provides for exemptions for minimal effects, is it your judgment that this kind of, what we would call nuisance spot, qualifies under that provision?

Dr. LINDER. As minimal, no, this would have more than minimal effect. This is probably maybe even a type 3 wetland. It is so tremendously important to waterfowl production and important to our ground water recharge. This size is particularly important to our ground water recharge.

Senator CONRAD. Well, type 3 is virtually permanent, is it not? I mean this certainly couldn't be a type 3.

Dr. LINDER. Type 3 will have water during a good part of the year.

Senator CONRAD. This is not a situation that has water.

Dr. LINDER. When was the photo taken? If it was taken in July—

Senator CONRAD. Well, it's clear it's been cultivated through it. I would say this is taken early in the spring. I don't know, but I think we can be safe in assuming this is not something that's—

Dr. LINDER. Well, a type 1 or type 3 doesn't make any difference. That size is extremely important. You mentioned Stewart and Kantrud's paper and you pointed out a number of breeding water fowl on ephemeral ponds which are Class I, but their Class I has no relationship to type 1.

Senator CONRAD. We understand that.

Dr. LINDER. Types 1 and 3 will include their classes I, II, most of their III's and some of their IV's; and we're talking about 60 or 70 percent of the production. The breeding population was related to those classes in that paper you cited.

Senator CONRAD. Right. I understand that.

Dr. LINDER. And these are the types or classes we are talking about.

Senator CONRAD. These are the ones that you say are—

Dr. LINDER. These are extremely important to waterfowl production. They are extremely important to ground water recharge. And we can't get around that fact.

Senator CONRAD. Are you telling me that ducks nest in this?

Dr. LINDER. I'm not saying anything about where they nest, but these wetlands fill and warm up early in the year, and here is where the ducks get their early nutrients particularly proteins to migrate on and to begin laying eggs.

Senator CONRAD. I hate to dispute you but I don't know if you've spent much time on a North Dakota farm but—

Dr. LINDER. I am from South Dakota, and I have worked research in South Dakota on ducks and the prairie many years.

Senator CONRAD. When we have a chance to hear from some of the farmers who are here who spend a good deal of their time watching what happens—

Dr. LINDER. Last Tuesday when I drove to the airport from Brookings, that's 60 miles, I watched the type of wetland in the photo. They are thawed now and the larger ones aren't, and where do you see the breeding waterfowl? They're in those small wetlands picking up their food to get built up for nesting and for migrating.

Senator CONRAD. In the study that we entered into the record which was a 3-year study on the type 1's that we're talking about there, one-tenth of 1 percent—one-half of 1 percent.

Dr. LINDER. Type 1's are not mentioned in that paper. It is class I. The type 1 includes their class I, II and some III. We're talking about two different classifications here.

Senator CONRAD. I understand that. I've said it three times, sir. I understand that.

Dr. LINDER. I've understood you wrong three times then. May I ask what you said?

Senator CONRAD. What I hear you saying is that there is no such thing as minimal effect.

Dr. LINDER. When you're talking about a wetland, that is absolutely right.

Senator CONRAD. We have an exemption written into the law that means nothing.

Dr. LINDER. That could very well be. I didn't write the law, but the thing about it is—

Senator CONRAD. I think you'll find that the lawmakers probably disagree with that observation.

Dr. LINDER. The thing about it is, if we destroy a wetland, that is a decision for society and a political decision. But we have to keep in mind that that wetland had some value.

Senator CONRAD. Well, why do you think lawmakers wrote that provision in, minimal effect? You say it means nothing. I mean, doesn't that seem a little extreme to you?

Dr. LINDER. Minimal effect, does that mean no effect? I don't know what minimal means in that context, and how it can be interpreted. To me minimal effect is a word that needs legal interpretation.

Senator CONRAD. No further questions, Mr. Chairman.

Senator FOWLER. Ms. Goldman-Carter and gentlemen, thank you again.

Dr. LINDER. I would like to mention I am just a citizen from South Dakota. I came in here on volunteer time, and I appreciate the chance to be heard by the committee.

Senator FOWLER. Our last panel today, Mr. Monty Burke, president of the North Dakota Farm Bureau; Mr. Robert Wetherbee, the president-elect of the National Association of Conservation Districts; Mr. Jeffrey Weispfenning,¹ Office of the Governor of North Dakota; the Honorable William S. Heigaard, State Senator from North Dakota; Mr. Gary Rudningen, president of the Minnesota Association of Wheat Growers, from Murdock, Minnesota.

¹ Mr. Weispfenning did not testify.

I guess we will go in the order. Mr. Burke, do you want to start?

**STATEMENT OF MONTY BURKE, PRESIDENT, NORTH DAKOTA
FARM BUREAU, MCKENZIE, ND**

Mr. BURKE. Mr. Chairman and Senator Conrad, I thank you for the opportunity to be here, and my name is Monty Burke, and I am the president of the North Dakota Farm Bureau. I would like to express my thanks to you for holding this hearing on the Food Security Act of 1985.

I do want to tell you that the three farm organizations in North Dakota did meet, and we did agree on certain principles that are involved in this controversy over the Food Security Act of 1985.

I think that, in itself, in my State, would, at times, be called a miracle, but I would indicate to you that it demonstrates the great concern that we have for the problem. We have four areas of mutual concern. These areas include: one, determination of a wetland; two, penalties for converting a wetland; three, a revision in the USDA's Highly Erodible Land and Wetland Conservation Certification form AD 1026; and four, compensation for preserving wetlands.

I would like to go into just some brief detail. I have submitted copies of my entire prepared testimony, and I would like for that to become a part of the record.

The first area of concern is what constitutes a wetland. The current rule states that a wetland must have a predominance of hydric soils and a prevalence of hydrophytic vegetation. The coalition felt that using these criteria in the most restrictive manner, as the present rules imply, the definition becomes too broad and encompasses areas that are wet only short periods in the spring of the year. And, as has been discussed many times, it's the nuisance areas that cause the farmer to get stuck and that's about all it ever causes. I would wholeheartedly disagree with what the previous speakers here have implied that they hold such valuable promise. I have been an active farmer in North Dakota for 40 years, which I doubt if few of the others can claim. I have watched what happens out there. The fact just doesn't substantiate the claim that they are so all-important. I would refer you to a document that was printed in June 1986, which was convincing people how good the "swampbuster" was, and let's define a wetland according to what we were being led to believe a wetland was then.

Wetlands consist of soils that are covered with standing water or are saturated most of the year and support mostly water-loving plants.

Senator, I want you to know that isn't what you and I are talking about when we are wanting to eliminate the nuisance wet areas in the field.

The coalition then addressed the compensation to producers that could have wetlands that could be preserved on their farm. There have been many speakers already that have talked about the preservation of those wetlands through using CRP and a series of payments that would compensate the landowner for taking that land out of production and putting it in useful purposes, wildlife habitat.

Another point that I want to touch on very briefly is changes that should be made in the form AD 1026, and that's the form that you file when you go to the ASCS committee to certify that you have or have not done any converting of wetland.

I would suggest that is a very confusing form. I have filled many of them out, and I always get just a little queasy feeling when I fill it out because it is similar to being asked if you have quit beating your wife. I don't mean to be facetious about it. I mean, that's just the way it is. You answer yes, and you feel you have involved yourself.

As far as wildlife preservation and sportsmanship, farmers have always supported wildlife and, as I said, I've been one for 41 years. We feed them year around. We appreciate them year around, and we have them on our farms year around.

So, I guess in conclusion, the point I'm trying to make is that farmers are not against conservation or wildlife. What we are against is regulations like some of the swampbuster or sodbuster regulations that take away the landowner's rights to manage the farm in an effort to make a decent living. Farmers need to be able to manage the land in the most economically feasible possible without unreasonable—and I stress again unreasonable rules and regulations that will, in the end, accomplish very little or nothing at all, except create very hard feelings.

Unreasonable rules and regulations like some of those pertaining to the swampbuster drives a wedge between farmers, Government agencies, wildlife groups, and environmentalists. What we should be doing is working together, through education and cooperation, toward true conservation goals that will be meaningful in the long run.

I say in all sincerity that some of the statements that I have heard made in regard to ownership and land, the responsibilities of ownership or lack of right to ownership have created much less of an atmosphere toward true conservation and preservation of wildlife habitat.

I thank you very much and would submit to any questions you might happen to have.

[The prepared statement and responses to Senator Conrad's questions of Mr. Burke follow:]

**U.S. Senate
Committee on Agriculture, Forestry and Nutrition
Committee on Conservation and Forestry**

**Chairman: Senator Wyche Fowler, Jr.
March 24, 1988**

Submitted by:

**Monty Burke
McKenzie, ND**

President: North Dakota Farm Bureau

Statement of Monty Burke, President
North Dakota Farm Bureau

Mr. Chairman,

Mr. Chairman, members of the committee, I would like to begin my testimony by thanking you for the opportunity to express our concerns with the swampbuster provisions of the 1985 Food Security Act. Our organization, North Dakota Farm Bureau, represents over 23,300 member families in the state of North Dakota. Through our policy development structure our members have asked for changes or modifications in existing regulations dealing with swampbuster provisions. In an effort to comply with our members' wishes our organization met with North Dakota Farmers Union and North Dakota National Farmers Organization on Dec. 16th in Carrington, N.D. These organizations met to determine if there were specific areas in which the three groups could agree. From that meeting a position paper was developed that outlined four areas of mutual concern. These areas included: 1) determination of a wetland, 2) penalties for converting a wetland, 3) a revision in the USDA's "Highly Erodible Land and Wetland Conservation Certification" form AD 1026, and 4) compensation for wetlands. I would like to reiterate that these were areas of concern for all three organizations. We actually agreed upon them. That alone, some would say, is a miracle. But I think it also demonstrates the great concern we all have for this problem.

I will go into greater detail in each of the areas mentioned. But, to begin with I would like to stress my frustration with this legislation. When I first heard the word "Swampbuster" I envisioned a large wet area that is filled with crocodiles, trees and marshes; an area wet year around that would take a large project to drain. That definition now sounds over simplified, but at the time we were assured in North Dakota that this legislation would not apply to our wet areas or nuisance mud holes in fields. We now find out that was far from fact. In a document entitled "U.S. Department of Agriculture Environmental Assessment For The Wetland Conservation Provisions of the Food Security Act of 1985" dated June-1986, the author states that "Swampbuster provisions would be a strong deterrent in the case of an inexpensive conversion of a small prairie pothole wetland to wheat production in North Dakota. This is because the sales of commodities from the converted land and land removed from set aside acres adds a relatively small amount of income which would be greatly offset by the loss in deficiency payments on the base acreage." In other words, North Dakota was meant to be included ever since the rules for swampbuster provisions were developed.

The first area the coalition of agricultural groups addressed was determination of a wetland. In other words, what constitutes a wetland? The current rules state that a wetland must have a predominance of hydric soils and a prevalence of hydrophytic vegetation. The coalition felt that using these criteria in the most restrictive manner, as the present rules imply, the definition becomes too broad and encompasses areas that are wet only short periods in the spring of the year, what we call "nuisance areas". These "nuisance areas" are planted at least two out of every five years and usually

every year. Presently, these areas are being included in the definition of a wetland. Our proposal asks that the definitions be changed to allow for the flexibility to manage these areas.

The second area the coalition addressed dealt with penalty provisions in the bill. There are several areas within the penalty section that can be addressed. First, what constitutes conversion of a wetland? The bill states a converted wetland is one that has been drained, dredged, filled, leveled or otherwise manipulated for the purpose of making production of an agricultural commodity possible, then goes on to say, "except if converted before December 23, 1985 or only if the land was actually a wetland". The producer can also crop a wetland in a dry year without any fear of penalties. This leads to confusion for the farmer. A clear definition with a quantitative measurement for conversion needs to be established.

Other concerns in the penalty section deal with the fact that a farmer, if suspected of converting a wetland, is guilty until proven innocent. In other words, if suspected of converting a wetland, the farmer loses all payments until the matter is settled. Also, the farmer can be accused of converting a wetland by anyone. The accuser doesn't even have to be identified or file a name to accuse someone. We feel this can lead to nuisance complaints, for both the farmers and the ASCS offices.

The final area dealing with penalties is the most important. This area deals with the severity of the penalties. Presently, there is no varying degree of penalty. If the producer is found guilty of converting a wetland, regardless if it is unintentional or inadvertent, two tenths of an acre or two hundred acres, that producer loses all their government payments. This seems quite severe, kind of like hanging a jaywalker. The remedy for this could be achieved two ways: 1) develop a system whereby the severity of the penalty matches the degree of the infraction, 2) allow the farmer to fix or repair a wetland that was converted inadvertently.

The coalition then addressed the issue of compensation for producers that have wetlands on their farms. The compensation for wetlands would help alleviate much of the problems that have arisen due to swampbuster provisions. The compensation program could be modelled after the Conservation Reserve Program or the Waterbank Program. It could allow the farmer to sign the wetland into the program for a 10 year period in return for a payment. The farmer would be allowed to sign up both the wetland and a corresponding amount of adjacent non-wetland to provide cover for wildlife. This would allow the farmer to square off a corner of a field, making it easier to manage.

The final area the coalition asked changes in concerns revisions in USDA's "Highly Erodible Land and Wetland Conservation Certification" form AD 1026. There are two sections in the form -- sections 7 and 8 -- that we feel presume a producer's guilt if he answers yes to the questions. The questions ask if the producer plans to convert any land for the production of an agricultural commodity. The vague wording leaves the producer questioning whether "any" land

is a wetland or not. If he answers yes to the question, is he in violation of the law? This wording needs to be clarified to allow the producer to know what he is signing.

In conclusion I would like to point out that farmers in my area are not against conservation or wildlife. In most cases, it is exactly the opposite. Many farmers all across North Dakota have won conservation awards for work done on their farms promoting conservation. Countless others follow the advice provided by extension experts on conservation practices. Some of my own land is enrolled in the Conservation Reserve Program. As far as wildlife preservation and sportsmanship, farmers have always supported wildlife. We feed them year around on our farms.

The point I'm trying to make is that farmers are not against conservation or wildlife. What they are against is federal regulations like swampbuster or sodbuster that take away the landowner's rights to manage the land, in an effort to make a decent living. Farmers need to be able to manage the land in the most economically feasible manner possible, without unreasonable rules and regulations that will in the end, accomplish very little or nothing at all except create hard feelings.

Unreasonable rules and regulations like some of those pertaining to swampbuster drive a wedge between farmers, government agencies, wildlife groups and environmentalists. What we should be doing is working together, through education and cooperation, toward true conservation goals that will be meaningful to all in the long run.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510-6000

April 7, 1988

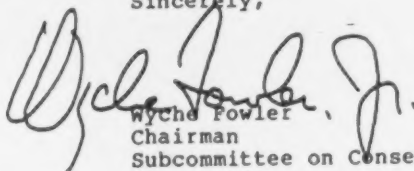
Mr. Monty Burke
President
North Dakota Farm Bureau
Box 168
McKenzie, North Dakota 58553.

Dear Mr. Burke:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
Chairman
Subcommittee on Conservation and
Forestry

Additional questions for MR. MONTY BURKE, PRESIDENT
NORTH DAKOTA FARM BUREAU, submitted by Senator Conrad

1. Do you think that farmers in your area are generally supportive of wetland preservation? Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland?
2. In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.
3. What differences have you observed in the implementation of the swampbuster and sodbuster law in North Dakota compared with other states?
4. What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?
5. In your opinion, are local USDA officials reluctant to impose a severe penalty--loss of all federal farm program benefits--if they felt that a swampbuster or sodbuster violation was minor or unintended?

LEGISLATIVE OFFICE
P.O. Box 2793
904 Divide Avenue
Bismarck, North Dakota 58501


Farm Bureau & Affiliated Companies

North Dakota Farm Bureau

May 18, 1988

The Honorable Senator Wyche Fowler
Chairman
Subcommittee on Conservation & Forestry
United States Senate
Washington, D.C. 20510-6000

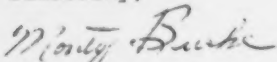
Dear Senator Fowler,

I apologize most sincerely for overlooking this until now. Perhaps it can serve some purpose even now.

I appreciated the opportunity to testify on this very important and troublesome subject.

Thank you for your concern.

Sincerely,



Monty Burke, President
North Dakota Farm Bureau

MB/ms

Enc.

cc: The Honorable Kent Conrad
The Honorable Patrick J. Leahy
Committee On Agriculture, Nutrition & Forestry

— North Dakota Farm Bureau Affiliates —

Nodak Mutual Insurance Company, Nodak Agency, Inc., N.D.F.B. Trade Development and Service Corporation, Washington Bureau Life Insurance Company

Mr. Monty Burke's responses to questions submitted by Senator Conrad.

1. Yes, but the determination of what is a wetland is the big issue. Mudholes and puddles in already farmed land are being designated as wetlands. This has created a very negative attitude among farmers. Most farmers are against draining land that has not been farmed before and converting it to farmland.
2. The way "swampbuster" has been approached has had a negative impact on wetlands. As late as December 1986, USDA was putting out information describing wetlands as an area holding water or saturated with water most of the year. After September, 1987 we find an entirely different story. There are several things that will assist in keeping a low area from being a mudhole besides draining. In traveling over the state last fall it was very evident this was being done.
3. I have no direct information. News stories indicated there were differences. In talking to people from adjoining states and other states I believe North Dakota was just ahead in realizing what sodbuster and swampbuster really was and how one-sided the implementation was going to be.
4. USDA has done the best they could with what they had to work with. What in the world could be expected--they didn't know what the rules were in July, 1987 that would apply to a farmer's operation as of or after December, 1985.
5. Most officials are sworn to uphold the law. Laws and rules seldom are absolutely black and white but rather subject to degrees of interpretation. In whose opinion was a violation committed? - a special interest group that would slaughter 2000 ducks a day in Louisiana and impose the "drop dead penalty" on a North Dakota farmer for some activity on land he owned--or thought he owned.

Senator CONRAD [presiding]. If you don't mind—if the other members don't mind, I would like to just follow up before we proceed because a couple of things—Kent [Kent Hall] would you share this picture with Monty?

We have heard assertions today that, what we would call "nuisance spots," are "critical for habitat." I have entered studies into the record that I think are fairly conclusive on that question.

We have also talked about penalty provisions.

From your observations and from your experience, Monty, the picture that we have provided, is that a critical habitat for ducks?

Mr. BURKE. Senator, looking at this and having had a lifelong experience in farming, that has little or no value as far as ducks are concerned because, first, the ground is tilled, and it's very obvious the water is there because of excessive rainfall.

In my area a few years ago, we had 11 inches of rain in the middle of May and, believe me, we had a lot of these places. They have no value at all.

Senator CONRAD. I must say I was stunned by the testimony that we heard just previous to yours. I was just amazed. I mean this is—if there's no reasonability that enters into the dialog and there's no reasonability that enters into the administration of these programs, what kind of response are we going to get from the farming community?

In your judgment, do you represent the Farm Bureau of North Dakota?

Mr. BURKE. 23,300 farm family members in North Dakota, Senator.

If we can't reach a reasonable area to talk about these things and to permit farmers to do reasonable things, it has been pointed out that 93 percent of the wetlands that remain are in private ownership. A very small percentage of the land that we operate is like what is pictured here or even smaller areas.

It would create an atmosphere of animosity and antagonism between the people that should be working together and that is something that I certainly do not want to see. I would plead with them to understand that we have a position out there—a lifetime of experience, and we are not—the statement that was made following the other hearing that was held here in Washington on the swampbuster thing, that the North Dakota farmer was wanting exemption from swampbuster couldn't have been more ridiculous, absolutely. We are just wanting to make it workable. That's all we're wanting to do, and these areas where you get stuck in the spring of the year, they cause you a lot of problems; all right?

Senator CONRAD. Next, we'll hear from Mr. Robert Wetherbee, who is the president-elect of the National Association of Conservation Districts.

Mr. Wetherbee.

STATEMENT OF ROBERT WETHERBEE, PRESIDENT-ELECT, NATIONAL ASSOCIATION OF CONSERVATION DISTRICTS [NACD], WASHINGTON, DC

Mr. WETHERBEE. Thank you, Senator Conrad.

As you point out, I am president-elect of the National Association of Conservation Districts.

I would like to correct the committee as my name is misspelled on the title and in the schedule. It's W-e-t-h-e-r-b-e-e.

I am a farmer from near Fairmount, North Dakota, in the Red River Valley, where the height of the controversy over swampbuster has arisen.

I've got a number of comments, and I would ask that my prepared written comments be inserted in the record so that I might shorten this a little bit.

Senator CONRAD. Without objection, so ordered.

Mr. WETHERBEE. I come here today representing NACD as well as an interested farmer. NACD represents about 3,000 conservation districts and about 15,000 supervisors, most of which are also farmers like myself.

I want to point out that our conservation districts are very involved with these programs and the Food Security Act of 1985. We are not just observers from the side. We are out there on the land. We are approving the conservation plans. We are working with SCS on developing alternative systems and field office technical guides. And we are providing education and trying to work with the farm community in trying to develop some reasonable solutions and make them understand the law.

Overall, NACD and the district officials think the programs are proceeding fairly well. Obviously, there have been some problems.

We are convinced that the biggest problem still facing us relates to the huge workload that these programs have created for districts in the Soil Conservation Service.

We think Congress has responded positively to our pleas for help on this situation in the past and we would encourage you to continue to support those programs.

I want to bring you some of the concerns that our members have on these programs. And, again, to keep it very brief on the other programs within the Conservation Reserve Program, some of the changes that our member districts would like to see would be an expansion to include lands that are not necessarily highly-erodible cropland. And I would include environmentally sensitive land such as the wetlands we have talked about and land that might help with water quality improvement.

NACD believes that the cost-share for trees should be raised to 75 percent as a way of increasing the amount of trees that are being planted. And we would propose that.

NACD thinks that instituting a continuous signup would improve the program and that it would relieve the tremendous overload of work that falls on SCS and ASCS twice a year.

As was testified to earlier today, everybody has pretty well got the bid program figured out, and to think that this is a competitive bid program is really kind of stretching the truth. A monthly signup would be much more efficient.

We also think that there is a need for a change in the way that CRP payments affect Social Security payments. As you may well be aware, the IRS has ruled that in most cases the CRP payments are farm income rather than rental income and it is causing some serious problems for some of our retired landowners.

Under sodbuster we think the program is working pretty well, except for the fact that there remains that concern over people who use alfalfa in their rotations.

Senator, you have given them 1-year exemptions twice in the past. We think that exemption needs to be continued for alfalfa in the established rotations.

We also think that, overall, all the programs need to have you address the penalty—the drop dead penalty or the death penalty, as we have heard, is a serious concern for NACD.

And then to get to swampbuster. Obviously, NACD has done some research on this matter, because we were asked early to take a position on this swampbuster issue.

The information that we were given early, when it was under consideration, was exactly as you have stated today, Senator, that the intent was not to bring new land into production. And our research of the minutes of the hearings is the very same as you have found, that we remain convinced that the original intent was to stop you from bringing new land into production, not to stop you from treating currently cropped land.

Now, I don't think anybody in the farm community has said, "Because you cropped it one year, it should be exempt." I think we're willing to say, "If it's been fairly regularly cropped—and maybe that's two-out-of-five or four-out-of-five, it shouldn't have been in there." There's a certain degree there that we can talk about, but I think the intent is clear.

In fact, I think if that intent was not clear, you would have found that the entire ag community would have been down here fighting tooth-and-nail to prevent swampbuster from ever being passed. Basically, I think the entire ag community understood the intent the same as you understand the intent. The problem came when the rules and regulations were written and things went awry.

One of the problems that is out there right now is the case of very poor communication and a lack of good information, and it has created a tremendous uproar in your area and it has created a tremendous uproar in small parts of a number of other States. And I'm sure you will hear more about that today.

The biggest uproar over it centers around the nuisance spots or wet spots. If we could eliminate that problem, we would solve almost all of the problems and complaints that are out there.

A number of questions were raised by earlier testimony and I would like to briefly attempt to answer a couple of those. One of those was a question about—there's been a concentration of questions about, "Why haven't more farmers lost their benefits?" And I guess I'm wondering why are they so concerned over how many farmers they can take benefits from? Why aren't they more concerned over how do we get the wetlands saved, rather than worrying about that.

We heard a lot of statements about the increase in activity in drainage in North Dakota and Minnesota, and I think there's a couple of reasons for that. As a farmer, most of the activity that occurred in the fall of 1987 was maintenance because it was an ideal year for maintenance of drainage, and we had had three continuous wet years with very little maintenance done.

To the Fish and Wildlife Service person flying overhead in an airplane, I think that looked like drainage. In most cases, it was maintenance.

One of the other things that they pick up is the fact that the Fish and Wildlife Service likes to use their wetland inventory maps to define wetlands. And there are two problems with that; one is that their inventory maps don't necessarily agree with the definitions of a wetland in swampbuster. They tend to overidentify; the second is that they are notoriously inaccurate.

In personal experience, we have a wetland, according to the Fish and Wildlife Service, on one of our farms which is a rock outcropping, covered with buck brush, and it is the highest point on a full section of land, but it is classified by Fish and Wildlife as a wetland.

Several people asked questions about why the urge to drain now when they didn't drain it 20 years ago? I heard that question specifically. And there are several reasons. In the Red River Valley, the principal erosion problem is wind erosion. The best way to handle wind erosion is to adopt conservation tillage.

Anyone who has had experience with conservation tillage is going to tell you that the first thing you do if you are going to make conservation tillage effective is to get your drainage in order. The wet spot that you show on the picture is a typical example of the farmer that was going to use no till or ridge till on that situation; that wet spot is a serious problem. It very nearly precludes him from doing it.

If we are going to ask our farmers to take care of wind erosion, we need to allow them to take care of minor nuisance spots like that to do it.

Another reason why we are doing it now rather than doing it 20 years ago is simple farm efficiency. You mentioned the 16-bottom plow. I started plowing with a 2-bottom plow 29 years ago. A 2-bottom plow was simple to go around that little spot, a 16-bottom is not.

This Nation has asked our farmers to become efficient and go on the world market and be competitive. We can't do it with 2-bottom plows.

Another reason for it is the fact that a wet hole like that, if we waited 2 weeks and that was the end of it, again, that's no particular big problem. Maybe we could live with that. The problem comes when you leave a spot like that and it rains 2, or 3, or 4 inches in the summer, and you lose the crop out of that spot. To come back once again, it is simply too expensive to be efficient in this day.

Another reason for why we're doing it now is the fact that there have been a lot of changes in ownership in recent years with the farm prices and all this type of thing. Some people never have drainage done because they were strapped for cash and couldn't do it. And now a new person comes along and buys that land and he can't do it anymore.

I think one of the other things that is especially galling to the farm community out there right now is that we continue to hear the wildlife community talk about their resources out there, and they talk about one person's nuisance is another one's resources and they come back to that point that land is private property.

And they need to realize they are going to have to work with farmers in a reasonable manner, or I think they are going to get a backlash that is going to do more harm than good.

Senator CONRAD. Let me just stop you on that question right there and ask you—we heard testimony this morning that the anger is gone; people aren't upset anymore. Everything is fine. Is that your observation? Is that your experience?

Mr. WETHERBEE. My experience is that it is not nearly as bad as it was. Part of that is because there's been—we were told that the SWAT teams were coming into the area and they were going to make determinations and people were going to, once and for all, know where they were at, in that it has eliminated some confusion. And it has taken the edge off some of the tempers.

But on the other hand, that information is right now just getting out to farmers, and I don't think we really know for sure yet. I guess I wouldn't be comfortable in saying that it's completely resolved.

Senator CONRAD. Let me ask that same question of Monty.

Mr. BURKE. Senator, the problem we're running into, and it's a fact of life, you go back a few years ago, and there wasn't a thought in my State of hunting for fee or, in my case, I had over four sections of land that had never had a no trespassing sign on it.

I think the controversy and the antagonism that has come up—the insinuation of the power and who had the ownership has created a situation that it isn't good at all.

At a meeting in Bismarck—and I did not attend it; so, I will have to rely on what somebody else told me—the number of farmers that showed up that were interested in doing something to offset what has been happening to them was almost unreal. That's not necessarily a happy situation for us to be in, but we're being forced into it. Angry people do unreasonable things on both sides of the aisle. Thank you.

Senator CONRAD. All right. Let me go back to you and allow you to complete your statement.

Mr. WETHERBEE. I would just like to make a couple of quick points and wrap it up here, Senator. One would be that NACD feels strongly that the penalty needs to be adjusted, much as you have said earlier.

We also feel strongly that we should expand the water bank and fund the water bank again, as a way of helping to compensate for some of these things.

Senator CONRAD. How about the notion of allowing this land to go into the Conservation Reserve?

Mr. WETHERBEE. That's my next point, Senator, yes, sir, both expanding the water bank or expanding the CRP to cover it.

Senator CONRAD. I would urge you to take a look at the bill that Senator Boschwitz and I have introduced and get your reaction to it.

Mr. WETHERBEE. Thank you, Senator.

Senator CONRAD. Thank you very much.

[The prepared statement and responses to Senator Conrad's questions of Mr. Wetherbee follow:]



The National Association of Conservation Districts
Statement on Implementation of the Conservation Provisions of the
1985 Food Security Act
Presented to
The Subcommittee on Conservation and Forestry
Committee on Agriculture
United States Senate
March 24, 1988

Mr. Chairman, members of the Subcommittee, my name is Robert Wetherbee and I am the President-Elect of the National Association of Conservation Districts (NACD). My home is Fairmount, North Dakota, where I operate a cash grain farm in the Red River Valley.

NACD is the national organization representing the almost 3,000 soil and water conservation districts in this country and the more than 15,000 women and men who sit on district boards. Conservation districts coordinate and carry out a broad range of local, state and federal resource conservation programs. In the fifty years since the first conservation district was formed, they have provided local leadership to federal and state resource protection programs in addition to their own. This three-way partnership of all levels of government has resulted in a conservation program that is the best in the world. This year, districts will share their conservation ethic with more than two million cooperators. Our soil and water resources, the real strength of this nation, are protected and enhanced because of the leadership provided by these local officials.

It is quite appropriate, Mr. Chairman, that you are holding these hearings today on how the implementation of the Conservation Provisions of the 1985 Food Security Act is progressing. So far we have just passed the halfway mark to the final enrollment in the Conservation Reserve, sodbuster and swampbuster are fully operational and 25% of the plans required for conservation compliance have been completed. This work has been accomplished in the 821 days which have passed since PL 99-198 was passed in December of 1985, and 648 days remain before the first deadline for conservation compliance. Now, just past the halfway point to fully implementing the conservation title, we need to take stock of the programs and to review our progress.

Conservation district officials have been intimately involved with implementing these new conservation programs. They are charged with the responsibility of approving conservation plans developed for sodbuster, CRP, and compliance. These officials have also been working with USDA to develop alternate conservation systems which will control erosion while allowing the farmer to retain a profitable operation. And they have been educating the farm community about the requirements of the conservation provisions of the 1985 FSA.

Overall, NACD and district officials believe these programs are proceeding well. There have been some problems, but that is to be expected with any new program. The encouraging aspect is that we have been able to find solutions to most of these problems. Our last obstacle still lies in front of us, however. The only way districts and USDA will be able to carry out their mandates is if the necessary resources remain available to provide technical assistance to the farm community. Congress has responded positively to meet this need, but the final outcome is far from assured. We feel that if we are to continue to make significant gains in reducing soil erosion, Congress will need to continue to provide the needed funding for implementing these programs along with the other resource conservation programs you have established.

Today I would like to address each section of the law separately, giving you some of our views of how the programs are working and outlining several changes which have been suggested by our membership.

Swampbuster

I believe that before we examine the progress of the Swampbuster program, it is important to refresh our memories on what the program was intended to do. The swampbuster provision of the 1985 Food Security Act was conceived and enacted to prevent federal agricultural policies from promoting the continued conversion of wetlands for agricultural production. The program was not designed to recapture wetlands that have already been converted nor to prevent farmers from producing crops on wet areas that they have farmed over the years.

There were problems with Swampbuster as USDA began to implement the program, but that is to be expected with any new program. I believe that most of the apprehension in farmers' minds came about from their being given incomplete and sometimes contradictory information early on in the program. Unlike some of the other Farm Bill provisions, swampbuster was to go into effect immediately. There was a big rush to get information out into the field and, as a result, the initial USDA field workforce simply was not given adequate time to prepare to implement the program. Lack of complete and accurate information frequently led to a breakdown in communications between the farm community and USDA. In the tri-state area where my farming operation is, for example, I received three different wetlands determinations from the field staff in each state on fields that were essentially identical in soil type, cropping history and prior drainage activity. In this particular case, staff from one state reported that the area was a wetland; the second state identified it as previously converted wetland, and thus exempt from swampbuster; and the third state determined that it was not a wetland at all. From what I have heard as an officer of NACD, similar problems have been occurring in other areas of the country.

My personal reading of the situation is that there was, and in some cases still is, a great deal of ambiguity about what constitutes a converted wetland and even what qualifies as a wetland. In my area of North Dakota, there are many farms where small parts of a field retain water in the soil for a week or ten days longer than the rest of it does. These are not the potholes that we traditionally associate with important wetlands areas of the Northern Plains. Farmers gradually improve these wet spots as funds are available so as to allow them to manage their farming operations more efficiently. As an example, one of the critical resource problems in my area is wind erosion. In order to control erosion, we are installing more and more conservation tillage systems. To

practice conservation tillage effectively, it is essential to manage soil moisture, which often means draining any wet spots in a field.

In the past few months, however, many farmers were being told that these areas were, in fact, wetlands, and that they had to avoid them to remain eligible for farm program benefits. This was creating a hardship for some farmers that we believe was never intended by Congress. The language of both the Senate and House reports indicate that it was never Congress' intent to alter the existing cropping and land management activities being used when the swampbuster provision was enacted.

I am here to report today that many of these problems caused by poor communication appear to have been solved in the last couple of months. The Soil Conservation Service has made a significant effort to distinguish between these wet spots and true wetlands. We believe that the agency is now on the right track in implementing Swampbuster and urge that they continue these efforts. NACD, and I believe most farmers, support protecting our highly valuable wetland resources. Further, no farmers that I know support bringing new land into production when we are already dealing with almost unmanageable crop surpluses and low farm prices.

I also believe that SCS now has a clearer understanding of the critical distinction between the areas Congress intended to protect and those areas that are simply nuisance wet spots to the farmer. The bottom line in any successful agricultural program is that farmers must be allowed to manage their farms effectively to meet all of our resource conservation goals and to maintain a viable operation in the process. The initial response from SCS on implementing swampbuster indicated that there would have to be major changes in the way farmers operate. However, we feel that the agency has changed its approach for the better. For the time being, we ask that you support the agency in continuing in this direction.

As a part of any wetlands protection program, we believe that there needs to be a financial incentive to the private land owner. After all, the farmer has a significant investment in the land predicated on expecting a return on that investment. To deny that return without any compensation certainly would be counter to our Constitutional heritage. There are a number of federal programs currently available which could be used to ensure that a farmer is adequately compensated for protecting this valuable resource for the public. We encourage you to examine the expansion of the Waterbank program as a way to help protect these wetlands and still fairly compensate the farmer. In addition, we feel it would be worthy of your time to consider expanding the Conservation Reserve program to include these sensitive wetland areas.

Conservation Reserve Program

NACD firmly believes that the greatest success of the entire 1985 Farm Bill has been the Conservation Reserve Program. Before last month's sign-up, nearly 23 million acres had been enrolled in the program. USDA has estimated that for each acre of highly erodible cropland placed in CRP, this country has saved 22.2 tons of soil. This program to date will result in an annual reduction of 510.6 million tons of sediment moving towards our streams, rivers and lakes. We are convinced that one of the long-term effects of CRP will be marked reduction in nonpoint source pollutants in this country's water supplies. It is also important to note that this amounts to a more than 25% reduction in erosion from

U.S. cropland. This positive environmental impact will only increase as we add acres to the program.

CRP has also had an impact on the cost of federal commodity price support programs. Recent studies estimate that CRP will save the federal government \$500 million between 1986 and 1990 and will save another \$300 million annually after 1990. I believe this clearly demonstrates that CRP is good not only for the environment, but also for the federal deficit.

NACD would like to suggest several changes to make the program an even better bargain for the country. First, we support an expansion of CRP to make lands which are not highly erodible cropland eligible for contracts. This would include providing coverage for wetlands, areas that could provide surface and ground-water protection, certain noncrop areas with significant erosion problems, and other environmentally sensitive lands. We make this recommendation with one provision: Conservation districts feel it is vital to protect the cropland erosion control component of the original legislation. Any new acreage added to the eligibility list for CRP should be in addition to the 45 million acres of highly erodible cropland presently authorized.

Second, we think the cost-share rate for tree planting should be closely examined. Our member districts feel that one of the reasons planting trees on CRP acres has lagged behind Congress' goal is that the cost of establishing trees is too high. We would suggest a change in the cost-share rate to allow up to 75% for areas planted to trees. There is an additional reason to promote tree planting through higher cost-share rates. As contracts begin to expire, a farmer with a tree crop will be less likely to destroy the vegetative cover than one with grass as the cover.

We would also suggest modifying the current method of sign-up. As CRP is currently being administered by ASCS, there are only 2 or 3 limited duration sign-up periods each year. NACD does not believe that this process is conducive to attaining optimum use of the farmers' or agencies' resources. SCS and ASCS are buried in a paper storm during and following each sign-up. All other conservation activities grind to a halt responding to CRP eligibility determinations and planning requests. Additionally, a farmer is given little flexibility in planning to spread out the workload. We would suggest implementing an open sign-up for CRP. This could include having a set day each month for accepting bids or accepting bids anytime but only opening them once a month or every other month. While we are not tied to any one method, we believe that there are more efficient ways to implement the program which will still ensure competitive bidding.

NACD also believes that the language included in the Fiscal Year 1988 Omnibus Continuing Resolution which limits CRP rental rates to no more than local cash rental rates may be unnecessary and could lower participation in the program. It is important to remember that we are asking the farmer to make a ten year management decision for the land. Many cash rental agreements are for much shorter periods, allowing the operator to change with market conditions. This difference makes it difficult if not impossible to compare the two rental rates. We urge you to carefully examine the impacts of this requirement before the next CRP sign-up period.

We also ask you to begin to look a year or two down the road. As we approach the end of the sign-ups, I think it will become more and more difficult

to attract acres into the program. This will be especially true if commodity prices improve. At that time you may want to direct USDA to change the method by which they currently determine eligibility for the program. One of these possible changes would be to include fields that are 50% highly erodible land, as opposed to the current requirement of 67% HEL.

Finally, the last problem we have identified is with the treatment the Internal Revenue Service gives CRP payments. Currently, IRS treats CRP payments as earned income, not rental income. This could mean that retired landowners may lose some of their social security benefits if they participate in the CRP. We believe that this is an impediment to participation to farmers who are retired or planning on retiring and urge you to find a means to rectify this problem.

Sodbuster

NACD feels that, so far, the sodbuster provisions are working well. It is important to keep in mind that sodbuster provisions were never intended to halt all conversions of highly erodible land to crop production. The provision was to ensure that the federal government did not subsidize the indiscriminate degradation of our soil. We now have the comfort of knowing that most new land being brought into production is protected against soil erosion. We also are comforted to know that no federal benefits are going to those farmers who sodbust without a conservation plan.

NACD's member districts have identified two items we feel should be addressed by Congress. A continuing problem relates to farmers who instituted conservation rotation systems on their cropland before December 23, 1985. These farmers, who alternate their grain crops with alfalfa, grasses grown for seed production, or some other vegetative cover, voluntarily decided to institute a management system to reduce soil erosion. For many of these farmers, they had no commodities, as defined by FSA, planted on part of their land between 1981 and 1985. This means that if they want to continue with their rotation, they are considered sodbusters and will have to implement a conservation plan immediately, where as a farmer who practiced no conservation in the same period has until 1995 to implement a conservation plan.

Mr. Chairman, NACD strongly believes that this quirk of our new soil conservation programs sends a terrible signal to conservation farmers. In essence, this provisions says that if you exploited your soil resource without regard to the problems of erosion, you have until 1995 to implement a conservation plan. However, if you attempted to control erosion, you must have your plan implemented immediately.

We urge you to rectify this basic inequity in our new conservation programs. The past two years, Congress has provided one-year exemptions to sodbuster for producers with an approved rotation system established before enactment of the Farm Bill. We urge you to make these exemptions permanent. This does not exempt them from having to meet conservation compliance requirements; it only puts conservation farmers on a level playing field with those who exploited their soil resources.

The other problem which has come to our attention relates to all programs, including sodbuster. Currently, the penalty for violating any of these

provisions is a total loss of USDA farm program benefits. Now that the programs have been operating for a couple of years, districts have identified a need to give USDA some limited flexibility for setting penalties for FSA violations which are of the same magnitude as the violation.

As an example, we have learned from one of our districts of a father and son operation that was faced with a loss of \$100,000 worth of benefits for adding 1.7 acres to their existing 1,200 acres of cropland. While this violation was eventually handled through the small areas exemption of the rules, it points to the need to address this problem. Not every similar instance is going to meet the small areas test, yet is still an inadvertent or minimal violation. NACD feels that local conservation officials need some discretion to set appropriate penalties in those cases.

Conservation Compliance

This provision is proceeding toward its goals without any noticeable need for change. We firmly believe that with adequate resources, the deadlines established in the Act can be met without undue hardship on our framers. At this time, we do not see any reason to alter either the 1990 planning or 1995 implementation deadlines.

Our chief concern is with providing the necessary resources to ensure that implementation can be accomplished. During the current fiscal year, Congress did provide SCS with additional funds to provide technical assistance to the farm community. However, we urge you to remain vigilant in this aspect of the programs. NACD strongly endorses any action which will provide increases in funding for technical assistance. We feel that we owe the farmer the chance to receive adequate, timely assistance in developing a conservation plan to meet compliance deadlines, while maintaining our base conservation activities.

We also urge you to keep in mind that the 1990 planning deadline is simply a milestone for these historic programs, not the end point. We are sure that there will be an even greater need for technical assistance during the conservation plan implementation phase of conservation compliance. We have learned from experience that unless a plan is properly placed in effect on the ground, the plan provides us no benefits. We also know that the implementation will require a greater expenditure of time for each individual than the planning process. For this reason, it will be imperative to maintain federal funding for adequate technical assistance.

We also would like to point out that the Administration has once again proposed to terminate funding for all conservation cost-share programs. NACD believes that this could have disastrous effects on these conservation programs. The American public has asked our farmers to control erosion. There will be some additional costs for farmers to accomplish this. NACD urges you to support continuation of these soil conservation cost-share programs to help defray the costs of implementing these conservation plans.

Thank you for this opportunity to appear before your subcommittee today. I will be happy to answer any questions you might have.

PATRICK J. LEAHY, VERMONT, CHAIRMAN
 JERRY MITCHELL, MONTANA
 DAVID H. PETER, ARIZONA
 DAVID L. BORN, OKLAHOMA
 HOWELL HEPBURN, ALABAMA
 TOM HARKIN, IOWA
 LENT CONRAD, NORTH DAKOTA
 WYCHE FOWLER, JR., GEORGIA
 THOMAS A. DASCHLE, SOUTH DAKOTA
 JOHN B. BREAUX, LOUISIANA
 RICHARD S. LUGER, INDIANA
 ROBERT DOLE, KANSAS
 JESSE HELMS, NORTH CAROLINA
 THAD COCHRAN, MISSISSIPPI
 RUDY BOSCHERT, MINNESOTA
 RITCH MCCORMELL, KENTUCKY
 CHRISTOPHER S. "TIT" BOWEN, MISSOURI
 PETE WILSON, CALIFORNIA
 DAVID C. CARPER, NEBRASKA

United States Senate

COMMITTEE ON
 AGRICULTURE, NUTRITION, AND FORESTRY
 WASHINGTON, DC 20510-8000

April 7, 1988

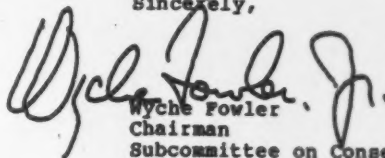
Mr. Robert Wetherbee
 President-elect
 National Association of Conservation Districts
 509 Capitol Court, N.E.
 Washington, D.C. 20002

Dear Mr. Wetherbee:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
 Chairman
 Subcommittee on Conservation and Forestry

Additional questions for MR. ROBERT WEATHERBEE,
NATIONAL ASSOCIATION OF CONSERVATION DISTRICTS,
submitted by Senator Conrad

1. Do you think that farmers in your area are generally supportive of wetland preservation? Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland?
2. In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.
3. What differences have you observed in the implementation of the swampbuster and sodbuster law in North Dakota compared with other states?
4. What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?
5. In your opinion, are local USDA officials reluctant to impose a severe penalty--loss of all federal farm program benefits--if they felt that a swampbuster or sodbuster violation was minor or unintended?



April 28, 1988

The Honorable Wyche Fowler
Chairman
Subcommittee on Conservation and Forestry
Senate Committee on Agriculture, Nutrition, and Forestry
328-A Russell Senate Office Building
Washington DC 20510

Dear Senator Fowler:

Please find enclosed the responses to the additional questions submitted by Senator Conrad to complete the record for the hearing you held on March 24, 1988. I, or the NACD staff, would be more than happy to discuss our positions further or answer any other questions.

Thank you for the opportunity to present out views.

Sincerely,

A handwritten signature in cursive script that reads "Robert Wetherbee".

Robert Wetherbee
President-Elect

National Association of Conservation Districts
509 Capitol Court, NE, Washington, DC 20002
(202) 547-6223

Additional Questions Submitted by Senator Kent Conrad
Responses from Robert Wetherbee, President-Elect
National Association of Conservation Districts

QUESTION 1 - Do you think that farmers in your area are generally supportive of wetland preservation? Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland?

WETHERBEE - Yes, I do firmly believe that farmers are opposed to the further destruction of true wetlands. They know that it does not make sense to create new production capacity in a time of over supply, such as currently exists. I also believe that farmers know the value of wetlands and appreciate nature as much as anyone. Afterall, our livelihood depends on our protecting the resources necessary to grow crops.

The key to retaining farmer support for swampbuster is to ensure that the program retains its intended purpose - to prevent further degradation of the wetlands by stopping new conversions. If, instead, the agency tries to stop improvement of previously converted wetlands, I think that you will lose all support of the farm community for the program. The question boils down to one of fairness. We must accept the fact that the public encouraged the farmers to convert some wetlands to production in the past and that those areas are lost. We have to concentrate on saving the remainder of the untouched wetlands.

To ensure this fairness, we believe that use of a cropping history test for determining whether or not a wetland has been converted should be included in the program's rules. We know that SCS has such a test in their technical manuals, but to lessen the confusion in the farm community this test should be clearly stated in the rules. This test should also be fairly strict, such as requiring that an area had to be cropped three or four years between 1981 and passage of the Act. This will protect the highly valuable potholes that may have been cropped once or twice during a drought in that period.

QUESTION 2 - In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.

WETHERBEE - While I don't have any specific data on this, my observation of the activities of other farmers in my area makes me think that the act has stopped the few conversions that were being contemplated. There was a great deal of confusion over what lands the law covered when it was first passed, so most farmers avoided all potential violations.

I also believe that the reports of numerous violations that have been given to Congress from environmental groups and the U.S. Fish and Wildlife Service are incorrect. I think that many of these reports are about activities which are occurring on lands not meeting the definition of wetlands under swampbuster. While looking at a field from the road or the air may lead a person to believe that a wetland was being drained, this was rarely the case, as demonstrated when a field delineation occurred in the area.

There were some activities initiated just before passage of the legislation that were detrimental to the wetlands resource. Several farmers took actions to destroy the vegetation in existing wetlands so as to have areas which did not meet the test for hydrophytic vegetation. There were others that began drainage projects to ensure that they were grandfathered under the exemptions of the Act. However, these activities were limited in number and ceased upon passage of the Act.

QUESTION 3 - What differences have you observed in the implementation of the swampbuster and sodbuster law in North Dakota compared with other states?

WETHERBEE - While early in the implementation of swampbuster there were some inconsistencies, there does not currently appear to be any differences as you cross state lines. SCS has made special efforts in the Red River Valley to ensure that wetland determinations have been made in a consistent manner. As long as the agency continues to proceed in this manner, I don't foresee any problems with differing interpretations as you go from state to state.

QUESTION 4 - What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?

WETHERBEE - In my mind, this indicates that USDA agencies have been working hard with the farm community to ensure that they do not operate outside of the Farm Bill provisions. There are those groups who assume that since there have been few full penalties assessed, that USDA has not been strictly enforcing the law.

Instead, I think it proves that the Department's Form AD1026 is working as it was designed to do. When a farmer comes into one of the field offices to sign up for program benefits, the form asks them if they have done any activity that could be swampbusting. The USDA employees are then informing the farmers that they cannot plant a crop on the land and still remain eligible for commodity benefits. This is in strict accordance with the law's requirements that a farmer is deemed to be out of compliance only after a crop has been planted.

I feel that those people who are claiming that the program is not being properly implemented are taking a negative view of the agriculture community. They seem to be operating on the assumption that farmers want to and are continuing to drain wetlands, and that many should have been penalized by this time. This program is supposed to protect wetlands, not force farmers out of federal farm programs. The fact that few farmers have been penalized shows that the law is being followed by the agriculture community.

QUESTION 5 - In your opinion, are local USDA officials reluctant to impose a severe penalty - loss of all federal farm program benefits - if they felt that a swampbuster violation was minor or unintended?

WETHERBEE - No, I think that USDA, by and large, has a dedicated staff that carries out the mandates of Congress as intended. I know that many of them are not comfortable with their new role as "policemen." Most of these people have spent their professional lives helping the farm community and to be placed in the position of watchdog and potentially having to penalize farmers bothers them. However, I am convinced that when a farmer is in violation, a penalty will be assessed.

It is important to keep in mind that the law states that the land must be planted to an annual crop before the farmer is in violation. The way the law is written, draining a wetland is not a violation. It is the act of planting a crop that constitutes the violation. I believe that these field employees are only doing their job if they inform farmers of this fact to keep them from compounding a previous mistake, such as altering a wetland.

Our experience also tells me that even if imposing the "drop dead" penalty will cause a farmer to become insolvent, the local USDA personnel will do so if the person is actually in violation. To give you an example, there was a father and son in Idaho that was assessed the full penalty by the field employees for sodbusting 1.7 acres of land. This would have put the operation into bankruptcy, but the field personnel had no leeway in setting the penalty. While I know that they did not want to do it, they did impose the penalty. That is why we are asking for a change in the program that will give the agency some flexibility in setting penalties. This will allow the magnitude of the penalty to be matched to the magnitude of the violation.

Senator CONRAD. Next, we will hear from Senator Bill Heigaard, from North Dakota, representing the Governor of North Dakota. Welcome, Bill.

STATEMENT OF WILLIAM S. HEIGAARD, NORTH DAKOTA SENATE MAJORITY LEADER, STATE SENATOR FROM NORTH DAKOTA

Mr. HEIGAARD. Thank you, Senator Conrad. I bring you greetings from the Governor and the people of North Dakota.

For the record, my name is Bill Heigaard. I am the senate majority leader of the State of North Dakota, and I am appearing here on behalf of the Governor, George Sinner.

Mr. Chairman, I, too, will summarize these remarks but request that the written testimony be admitted into the record.

Senator CONRAD. Without objection, so ordered.

Mr. HEIGAARD. Mr. Chairman, this might surprise you but wetlands have generated a great deal of controversy in our State over the past decades.

There are some in our State who point to the elitist groups from the urban areas of our country that wish to control North Dakota's destiny from afar, and some outside of our State point to North Dakotans as greedy people, degrading natural resources to make a quick profit.

I think, Senator, the truth is somewhere in between those two points. North Dakota contains many of the remaining prairie wetlands in this country. The other States have drained most of theirs.

North Dakota is also a stronghold for many of this country's remaining family farms. Our State's farmers and our State's economy have been ravaged by the economic circumstances of the past decade. Many continue to fight for their survival from day-to-day.

The battle over North Dakota's wetlands have involved all levels of government. The national conservation organizations have focused on North Dakota wetlands to stop water development projects that have been under consideration in North Dakota since the early days of statehood.

Countless dollars have been spent by all parties to the fray for attorneys and lawsuits and, in the end, about all that both sides have demonstrated is that we can fight each other to a standstill with no progress toward the goals of the other side.

Governor Sinner has worked to try to reestablish communications between these parties. As a result of a series of agreements he signed with the regional director of the U.S. Fish and Wildlife Service, the North Dakota Wetlands Management Committee has been established as a forum to discuss wetland issues.

The committee is composed of 25 members representing the various interests that have battled over wetlands in North Dakota in past times. There's a complete list of these members, Senator, but I will only refer to a few of them. And if you look at the list you will see that it is a well-balanced list, about one-half of them representing the conservation, the fish and wildlife, and the other one-half representing those who are more aligned to agriculture.

They did come up with several recommendations, Senator, and, of the 25 organizations involved in these, 23 of them voted in favor

of these recommendations. Only the National Wildlife Federation and the National Audubon Society abstained from voting.

One of the first issues discussed by this group was the swampbuster provision of the farm bill. And I don't mean to be facetious about this, but I've been listening to the testimony this morning and I guess I have been up to my ankles in swampbuster back in North Dakota for the past 18 months or 24 months, and I think maybe the name "swampbuster" is a little bit of a misnomer. I don't think that we are breaking up many swamps in the State of North Dakota.

Probably if we called it maybe a "mud puddle buster" it would be more appropriate to North Dakota because that's really what we're talking about in our State.

There are areas of disagreement but, more importantly, there are points of agreement and some of the recommendations that this Wetland Management Committee proposed are as follows: First of all, under swampbuster, the maps of farmers' fields at the ASCS office will be marked to show existing wetlands and drained wetlands prior to the implementation of swampbuster. The maps will also show the location of the drains prior to swampbuster.

These areas are determined by using soil maps in conjunction with aerial photographs of the farmers' fields. This determination process in North Dakota may take up to 2 years to complete and if that is the case, the apprehension and uncertainty surrounding swampbuster in North Dakota will continue to fester.

Farmers may unknowingly take actions which violate swampbuster. As a result, the Wetlands Management Committee has recommended that the Soil Conservation Service give this wetland determination process a high priority to achieve a speedy completion of this process.

Further, the Wetlands Management Committee suggests that there are different levels of violation of swampbuster, and we did hear about that this morning. And I was also pleased to hear Mr. Hertz say that they are considering changing the penalties according to the degree of violation. That, indeed, is good news and a very reasonable way to approach this particular problem.

Another area involves the provisions of the 1985 farm bill that necessitates completion of the USDA's Highly Erodible Land and Wetland Conservation Certificate, which is Form No. 1026. The Wetland Management Committee termed this form vague and negative and, as a result, the committee recommends that it be modified so that it indicates whether or not a farmer intends to drain a wetland, whether a farmer intends to clean out an existing drain, or whether or not a farmer wants a wetland determination.

And, finally, because farmers are restricted from exercising managerial prerogatives to the land, the Wetlands Management Committee recommends that a program to provide annual compensation for wetlands be developed. In essence, the committee suggests an expansion of the CRP Program to allow bidding of wetlands, and we have heard those suggestions also today.

These recommendations, Senator, are recommendations from a cross-section of groups in the State of North Dakota, and I believe that they accurately reflect the concerns and the wishes of the majority of people of our State.

And if I might, Senator, just editorialize a little bit on some of the things that I've heard today, one of the comments is that, "Well, if you couldn't farm it, you know, 1 out of 4 years before, what's so bad about it not being able to do it now?" And I don't think that is the question. I think if any one of us was involved in an occupation that, through no fault of our own, because of a natural disaster, we could be deprived of our entire income for a year, or a great percentage of that year—or a percentage of that income for a year, and were prohibited from taking reasonable actions to protect our income, I think we would think that was pretty serious. And that's what we're talking about here.

We are telling people who make their livelihood from farming that they can't even take a reasonable action to protect their investment that they have in the crop for that year. And I don't think that that is reasonable.

And, finally, one of the main problems back in North Dakota right now, and in our area, is the uncertainty as far as the enforcement of these regulations are concerned. Even this morning, from the people who are administering the program, we heard mixed signals. And when that happens, it creates confusion back in the field and by not clearing up these mixed signals the confusion among the farmers becomes mistrust. And when you get that far—and many times that mistrust is justified—it's difficult then to come back out of it.

Senator, I appreciate you allowing me this time to testify.

[The prepared statement of Governor Sinner and additional comments by Mr. Heigaard follow:]

STATEMENT OF
GOVERNOR GEORGE A. SINNER
NORTH DAKOTA

PRESENTED BY
SENATOR WILLIAM HEIGAARD
MAJORITY LEADER
NORTH DAKOTA STATE SENATE

SUBMITTED TO
UNITED STATES SENATE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY
SUBCOMMITTEE ON CONSERVATION AND FORESTRY

MARCH 24, 1988

Good morning, Mr. Chairman, members of the committee. For the record, my name is Senator Bill Heigaard. I am the Senate Majority Leader of the North Dakota Senate, and I am appearing here on behalf of Governor George Sinner.

Wetlands have generated a great deal of controversy in my state for decades. Agricultural and water development interests have confronted environmental interests over the impact of wetland protection policies and the impact of those policies on the local citizens and economy.

Some in our state point to elitist groups from urban areas of our country that wish to control North Dakota's destiny from afar. Some outside the state point to North Dakotans as greedy people, degrading natural resources to make a quick profit.

The truth is somewhere between those two points of view. North Dakota contains many of the remaining prairie wetlands in this country; the other states have drained most of theirs. North Dakota is also a stronghold for many of this country's remaining family farms. Our state's farmers and our state's economy have been ravaged by the economic circumstances of the past decade. Many continue to fight for survival from day to day.

The battles over wetlands have involved all levels of government, ranging from the local water boards at the county level to the U.S. Fish and Wildlife Service at the federal level. National conservation organizations have focused on North Dakota wetlands to stop water development projects that have been under consideration in North Dakota since the early days of statehood.

Countless dollars have been spent by all parties to the fray for attorneys and lawsuits. One North Dakota wetland legal case went all the way to the U.S. Supreme Court for resolution.

And in the end, about all that both sides have demonstrated is that we can fight each other to a standstill, with no progress toward the goals of either side.

Governor Sinner has worked to try to reestablish communications between these warring parties. As a result of a series of agreements he signed with the Regional Director of the U.S. Fish and Wildlife Service, the North Dakota Wetlands Management Committee has been established as a forum to discuss wetland issues. The committee is composed of twenty-five members, representing the various interests that have battled over wetlands in North Dakota in the past.

Participants on the committee include the following: North Dakota Water Commission, North Dakota Association of Soil Conservation Districts, North Dakota Chapter of the Wildlife Society, Garrison Diversion Conservancy District, North Dakota Department of Agriculture, North Dakota Wildlife Federation, North Dakota Association of Counties, Oahe Chapter of Pheasants Forever, National Wildlife Federation, U.S. Fish and Wildlife Service, North Dakota Ag Coalition, North Dakota Parks and Recreation Department, North Dakota Water Users Association, North Dakota Farmers Union, North Dakota Game and Fish Department, Ducks Unlimited, North Dakota Farm Bureau, Pheasants Forever, North Dakota Water Resource District Association, North Dakota National Farmers Organization, National Audubon Society, North Dakota State Soil Conservation Committee, and Governor's Office.

One of the first issues discussed by this group was the Swampbuster provisions of the Farm Bill. There are areas of disagreement; but, more importantly, there are also points of agreement.

Because the North Dakota Wetland Management Committee represents such a broad range of perspectives regarding wetlands, I think that the recommendations that have been developed by this group deserve your close scrutiny. I have submitted the detailed recommendations of the committee as a part of my written statement, but let me summarize the major points.

Under Swampbuster, the maps of farmers' fields at the ASCS office will be marked to show existing wetlands and drained wetlands prior to the implementation of Swampbuster. The maps will also show the location of drains prior to Swampbuster. These areas are determined by using soil maps in conjunction with aerial photographs of the farmers' fields. This determination process in North Dakota may take up to two years to complete. If that is the case, the apprehension and uncertainty surrounding Swampbuster in North Dakota will continue to fester. Farmers may unknowingly take actions which violate Swampbuster. As a result, the Wetlands Management Committee has recommended that the Soil Conservation Service give this wetland determination process a high priority to achieve a speedy completion of this process.

The Wetland Management Committee also suggests that there are different levels of violation of Swampbuster. For example, digging a four-foot deep drain seems to be different than a dead plow furrough accidentally put down through a small depression by a hired man. Yet the penalty in both cases is the same. The Wetland Management Committee recommends that, because there may be varying degrees of violations, penalties should vary to fit the nature of the infraction. Furthermore, in the case of inadvertent violations where wetland determinations have not been done, farmers should be allowed to come back in compliance by restoring the wetland.

The conservation provisions of the 1985 Farm Bill necessitate completion of USDA's "Highly Erodible Land and Wetland Conservation Certification" Form 1026. The Wetland Management Committee termed the form "vague" and "negative." As a result, the committee recommends that it be modified so that it indicates whether or not a farmer intends to drain a wetland, whether or not a farmer intends to clean out an existing drain, and whether or not a farmer wants a wetland determination.

Finally, because farmers are restricted from exercising managerial prerogatives to the land, the Wetland Management Committee recommends that a program to provide annual compensation for wetlands be developed. In essence, the committee suggests an expansion of the Conservation Reserve Program (CRP) to allow the bidding of wetlands, drained wetlands, and associated uplands into the program.

For the record, I should point out that National Audubon Society and National Wildlife Federation representatives have abstained from votes on these recommendations, because they are unable to support all of the recommendations.

Nevertheless, there is strong support from a broad cross section of groups that has traditionally battled over wetlands issues in North Dakota. Because of that agreement, I urge that you consider implementing these ideas.

I appreciate the opportunity to be here today for Governor Sinner. Are there any questions?

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Recommendations Regarding Swampbuster
North Dakota Wetlands Management Committee
Adopted: January 19, 1988

1) Wetland Determinations: Farmers are concerned that individuals might be found in violation of swampbuster guidelines, even though a determination of wetland areas and converted wetland areas on farmers' fields may not have been made by Soil Conservation Service (SCS) personnel. We urge that the SCS give the wetland determination process a high priority to achieve a speedy determination of wetland areas and converted wetland areas for purposes of the swampbuster provisions.

2) Compliance: We support the compliance provisions of the Food and Security Act. However, there may be varying degrees of violations of the compliance provisions; therefore, penalties that vary to fit the nature of the infraction should be adopted.

Farmers, who inadvertently violate Swampbuster provisions and who have not had wetland determinations made for their fields, should be able to restore wetlands to come back into compliance with the law. Also, farm program benefits should not be withheld from individual producers until the governing agency has proved that there has been a conversion of wetlands.

3) USDA's "Highly Erodible Land and Wetland Conservation Certification" Form 1026: We feel that two sections of this form--sections 7 and 8--presume a producer's guilt, if he or she answers "yes" to either question. For instance, in Question 8, the language, "Do you plan to convert any land including wet areas for the production of an agricultural commodity. . ." is vague. The term "wet areas" may or may not mean wetlands.

The form is extremely negative and offers a farmer no help in requesting determination of wetland acreage on his or her land. We prefer a positive, clear-cut approach that indicates whether or not a farmer intends to drain a wetland, whether or not a farmer intends to clean out an existing drain, and whether or not a farmer wants a wetland determination.

4) Compensation: As the Swampbuster provision is now written, farmers are restricted from exercising their managerial prerogatives to the land. We support programs that provide annual compensation to landowners for wetland protection.

LANDOWNER COMPENSATION FOR PROTECTION OF WETLANDS

I. Concept.

It is recommended that a pilot program covering the Prairie Pothole Region be established whereby farmers and landowners have an opportunity to place wetland and associated uplands into the Conservation Reserve Program. Landowners would be allowed to place wetlands and associated uplands into the Reserve Program and would be compensated in the same manner as provided in the Conservation Reserve Program. Some of these recommendations may be able to be implemented by making rule changes to the Conservation Reserve Program, and others may require legislative amendment of the 1985 Food Security Act to be implemented. It is not being recommended that a new program for wetland protection be established, but that the Conservation Reserve Program be expanded and improved so that landowners can bid drained or undrained wetlands and associated uplands into the Reserve Program.

II. Statement of Intent.

1. Program provides annual financial compensation to landowners.
2. Program provides for a means of wetland protection and enhancement.
3. Program would generate revenue to farm communities.
4. Program would meet intent of 1985 Food Security Act by taking agriculture land out of production to the extent that drained wetlands are restored under the program, such restoration would not be allowed to adversely impact upstream or downstream landowners.
5. Overall, the program would compensate landowners for the variety of benefits wetlands provide for the public welfare and the overall benefit of the society.

III. General Guidelines.

1. The Conservation Reserve Program would be adjusted or expanded so that wetlands and associated uplands could be bid into the Reserve Program utilizing the same bidding process as is used for the current Conservation Reserve Program. The Secretary of Agriculture would set maximum bid limits per bid pool, and the same bid pools for wetlands would be used as those used for the existing Conservation Reserve Program.
2. Any wetlands in private ownership would be eligible for the Reserve Program.

3. Uplands adjacent to wetlands may be bid into the Reserve Program along with the wetland acreage, with no criteria requiring the upland to be highly erodible land.
4. Wetlands located in both cropland and noncropland areas will be eligible for the Conservation Reserve Program. This includes rangeland, grasslands, and cropland associated wetlands.
5. A minimum of associated upland to be included with cropland wetlands would be the currently accepted buffer strip in the Conservation Reserve Program of 66 feet, and the maximum allowable ratio of upland to wetland would be 5 to 1. Uplands associated with noncropland wetlands can also be included in the Reserve Program, with a minimum ratio of zero to one upland to wetland on range land associated wetlands, and a maximum of a 5 to 1 of upland to wetland for range land associated wetlands.
6. Since these recommendation are intended to be implemented through adjustment or expansion of the Conservation Reserve Program, the current provisions of the Conservation Reserve Program would apply to wetlands and associated uplands which are placed in the Reserve Program. This includes the reserve period of ten years, penalties for noncompliance, the administration of farm program base acres, maximum limits with respect to individual landowners and counties, and other provisions of the Conservation Reserve Program.
7. Restoration of drained wetlands shall qualify for the Reserve Program. Upland to wetland ratios will be the same as upland associated wetlands. It must be assured that restored wetlands will not adversely affect upstream or downstream landowners.
8. Wildlife food patches and upland portion of program lands will be eligible using the same guidelines as used for the existing Conservation Reserve Program.
9. Wetlands covered by U.S. Fish and Wildlife wetland easements will be fully eligible for the Reserve Program, with no discounts.
10. Any wetland for which an annual compensation payment is received (federal waterbank, state waterbank, etc.) is ineligible for the Reserve Program while the landowner receives annual compensation from such other program.
11. This program will serve as the pilot program for the Prairie Pothole Regions of North Dakota, South Dakota, Minnesota, and Montana.

Additional Comments by

William S. Heigaard
North Dakota Senate Majority Leader

before the

Subcommittee on Conservation and Forestry
Committee on Agriculture, Nutrition, and Forestry
United States Senate

March 24, 1988

I appreciate the opportunity for including this statement in the record.

This hearing on the wetlands protection subtitle, or the so-called "swampbuster" provisions, of the Food Security Act of 1985 is very important to North Dakotans. North Dakota has one of the largest concentrations of prairie wetlands in the United States, and its citizens are generally in favor of preserving them. However, most would agree that wetland preservation laws must achieve a fair and reasonable balance between competing interests.

The Department of Agriculture's implementation of the swampbuster law in North Dakota has unfortunately been fraught with controversy. A major source of concern is USDA's inclusion, in the definition of "wetlands," of small, shallow depressions that hold water only for a few weeks during the spring. These "nuisance" spots have typically been cultivated many times in the past. Only in the very wettest years would these depressions remain flooded for a length of time sufficient to preclude cultivation.

I represent North Dakota's 10th Senate District, which is in the area of the state known as the "prairie pothole" region. The topography of the district is marked by a large number of shallow depressions, or potholes, scooped out by retreating glaciers during the last ice age. A number of potholes are true lakes or ponds; they are of a depth sufficient to contain water all year, except perhaps during years of very low rainfall. But many others are simply small, shallow pockets that collect water in the spring, from a combination of melting snow and rainfall.

These shallow potholes, generally referred to as "Class I" wetlands, are routinely cultivated by farmers. In many cases, Class I wetlands are too wet for plowing and/or seeding at the same time that the upland portions of the fields are ready, and the farmers must either come back with their equipment at a later time or dig a temporary shallow drainage ditch. In drier years, farmers may be able to cultivate the entire field at one time.

The 1985 Food Security Act defined "wetlands" as land that has a predominance of hydric soils, is capable of supporting hydrophytic vegetation, and under normal circumstances does support hydrophytic vegetation. Because USDA has interpreted "normal circumstances" to mean the absence of agricultural cultivation, Class I wetlands fall within the scope of this definition. Therefore, farmers find that they now risk a violation of the swampbuster provisions--with the resulting loss of all federal farm program benefits--if they cultivate a crop on land that they have routinely cultivated in the past.

To deal with this problem, I recommend two specific actions:

1. Exempt land that has been previously cultivated from swampbuster provisions. To be consistent with the subtitle dealing with highly erodible lands (the "sodbuster" provisions), this exemption could apply to any land that was cultivated for any of the crop years 1981 to 1985.
2. Grant the Secretary of Agriculture discretionary authority to impose penalties other than the loss of all federal farm program benefits. This penalty seems to be completely out of balance with some of the potential violations that could trigger it, such as a minor or unintentional wetland violation.

These two actions would, I believe, result in more reasonable and equally effective law. Much of the history of swampbuster provisions suggests that the Congress' primary intent was to prevent the future conversion of wetlands into cropland. The changes noted above would not alter this intent in any way. Further, the change in the penalty provisions may encourage a more rigorous enforcement of the law by local USDA officials. Loss of all farm program benefits, in the current agricultural economic climate, would in many cases simply put the farmer out of business. Local officials understandably may be inclined to overlook what they deem to be a "minor" violation because of the severity of the only penalty available--which means that farmers who violate may now be unpenalized. Allowing somewhat more flexibility could therefore actually increase enforcement of the law and do more to protect wetlands from illegal drainage.

Senator CONRAD. Thank you, Bill. Let me just follow up with you. You are in the middle of the area that is most impacted. And we heard testimony this morning that the wind has gone out of these sails; that this balloon has been punctured and people aren't concerned anymore. They are at peace with what we have in front us.

Is that your observation?

Mr. HEIGAARD. Well, Senator, I'm, of course, as you know, right up against the Canadian border. So, we don't get the news as fast as others, but I have not found that to be true at all. In fact, in the past 3 weeks, there's been more concern about it and primarily because, right at this time in our district anyway, we are involved in the signups. We are now involved in the signups.

The people are becoming—they're having to sign these forms and they're also having to go through the Soil Conservation office in addition to the ASCS office to make sure that their checks come through. They are very concerned—tremendously concerned about not being in compliance, because the farm program, as it's written, almost precludes not being in the program.

So, contrary to that, Senator, what we heard this morning, I would say that there is more agitation, right now, because of the activity.

I would also venture to guess that once the farmers get in the fields we are going to hear less again, because they are busy at it, but the fear is still there, Senator. The concern is still there, and I think that there has to be some clarification of the regulations.

Senator CONRAD. A lot of that fear, in my observation, flows from the drop dead nature of the penalty—the fact that you've got a penalty in law that is so draconian. And we have already heard from some that the "minimal effects" provision means nothing. And so, you're left with a situation which, on the face of it, any violation and you're done.

And we are not talking about just losing your farm program benefits for a year. We're talking about being done. You're out of business.

I think we know that many farmers simply could not lose farm program benefits for 1 year. It would be the end of the game.

What's your analysis of what drives the anxiety out there?

Mr. HEIGAARD. Senator, I think that you've hit right on it. The other part of it—and there are I guess extremes on both factions—is the concern in our area that has always been with the wildlife groups. We have had—I guess I've been up in that area for 19 years now, and we have had continuous controversy between the wildlife groups and the farming community over what can be drained and what cannot be drained. And it has been consistently that the farmers have lost and had to back down.

It becomes a real sense of frustration for them at this level, too. They not only see it as government intruding into their farming practice, that they've already done it, but they see one more time where a group that they have nothing to do with is telling them how they can farm. So, it's a frustrating time for us right now.

Senator CONRAD. One other question that I would like to ask you, Bill, before we move on to our final witness, and that is this whole question of nuisance spots.

We've talked about the penalty provisions. We've talked about nuisance spots here today. I find that that is something that just drives people to distraction. There's an understanding that we've got swampbuster; we've got sodbuster. In principle, they make sense. They're positive. People are supportive of them.

But the implementation, when you're talking about a situation like this one that's in the photograph that we circulated before, and they say, "You can't touch this," it just causes people to feel that the Federal Government is intruding in their lives in a way that just doesn't make any sense. I mean, if it was from their own observation some nesting area or important waterfowl habitat, that might be a different story, but they know that's not the case from their own observation.

What's your reaction to that and what's your own observation?

Mr. HEIGAARD. Senator, I would agree with you that swampbuster, and the concept of it, is very positive and would be very beneficial for us in North Dakota. I think that we should pursue it and we should pursue the beneficial aspects of it.

But those points that you bring up that really are totally irrational—when you're talking about someone with a tractor that's pulling—I don't know—a 24-foot or 30-foot cultivator and asked to go around that small, what we call a nuisance pothole, is totally unrealistic.

Senator, something else crossed my mind. I live not right in the center of the central flyway but pretty close. We have both the spring migration of the geese and the ducks and also the fall migration. My experience in both situations, as far as the number of waterfowl that stop in our area or that do come, hinges largely not so much, I guess, on water, one way or the other, as it does, for instance, in the fall of the year whether we have been able to get the crop out. If the crop is still there, they are going to stop and eat. If the crop isn't there, they are going to look for someplace else.

And the same is in the springtime, if we're early in the spring and haven't got it in, we will not see as many, but if it's later they are going to be there.

So, I think the ducks have a kind of a smart way of figuring out where to go.

Senator CONRAD. All right. That's a good point. I mean, one of the points we should make today is that there are many factors that influence waterfowl populations. We know that and it's an important point to make.

Next, we will hear from the gentleman from Minnesota, and, if you will, pronounce your name so I don't mispronounce it.

**STATEMENT OF GARY RUDNINGEN, PRESIDENT, MINNESOTA
ASSOCIATION OF WHEAT GROWERS, MURDOCK, MN**

Mr. RUDNINGEN. Senator Conrad, my name is Gary Rudningen. I am a wheat farmer from Murdock, Minnesota. I am president of the Minnesota Association of Wheat Growers, and I am also today speaking on behalf of the National Association of Wheat Growers. I very much appreciate the opportunity to comment on the conservation title of the farm bill, and to explain some of the problems

farmers are encountering with the implementation of the swampbuster and conservation compliance provisions of the law.

I also feel very honored to be in the company of my fellow neighbors from North Dakota.

As a farmer, I am well aware of the need to maintain and conserve our land resources which are the basis for the largest industry in our country—agriculture. But, there are many different views on how we should maintain these resources. These different views have been addressed and the choice has been made to use legislation to require the majority of U.S. farmers to maintain these resources. I am here today in order to report to you on how this new and far-reaching legislation will affect wheat farmers and also to present a justified case for minor changes in this legislation.

It is important to point out that the final conservation rules published in the Federal Register on September 17, 1987, stated that the USDA "has sought to implement and administer the act's requirements in a reasonable manner."

Senator CONRAD. Let me stop you right there for just a minute, and I apologize for doing this.

A 15-minute rollcall vote has just started, and we could do this one of two ways. We could either ask you to wrap it up very quickly, which I really would prefer not to do. The other alternative is, we could go over to the vote and this panel would be welcome to accompany me and go up in the gallery and watch the vote and then return as quickly as we can—it will take 15 minutes.

Mr. BURKE. Senator, if I could, if I really hurry I'll catch a plane to Bismarck and otherwise it means a total day of my—if I could be excused without—I would certainly be happy.

Senator CONRAD. We would be pleased to do that. We've had not only a chance to get your statement but also to ask you some questions, and we very much appreciate your participation.

And if the rest of you wouldn't mind if we would go over and come back in 15 minutes, or you're welcome to stay here, if you would prefer, but if you would like to watch the vote, sometimes that's interesting.

The subcommittee will stand in recess for 15 minutes.

[Recess.]

Senator CONRAD. The subcommittee will come to order.

First, I want to thank everyone for their patience. This is the way things are around here. We have no way of knowing when a vote will be called.

So, if we can proceed with your testimony Mr. Rudningen and, again, our apologies for the interruption.

Mr. RUDNINGEN. Fine. Thank you, Senator.

I had just completed the paragraph, do you want me—there's no need for me to begin the whole process.

Senator CONRAD. No, that's fine. If you will just pick up from where you left off, the stenographer will put it in the proper order.

Mr. RUDNINGEN. All right. We agree that the two agencies responsible for implementing the conservation title of the Food Security Act of 1985, the ASCS and SCS, have indeed done their very best to implement this program in a manner that is reasonable to farmers and at the same time meet the objectives established in the farm bill. However, their ability to reasonably adjust to certain

situations has been obstructed by a few unreasonable provisions in the conservation provisions of the Food Security Act of 1985.

SWAMPBUSTER

My next point was on the swampbuster. The first obstacle to reasonable implementation of wetlands rules is the language in the law that defines a wetland to be any lands that have a predominance of hydric soils which are saturated by water long enough to support hydrophytic vegetation under normal circumstances.

And I would like to reiterate here, in 1984, in my area, we had 46 inches of rain, in 1985, we had 52 inches of rain, and in 1986, 48 inches of rain in a normal 21-inch rainfall area. So, we had hydrophytic plants growing on top of our hills in those particular areas in central Minnesota.

This has been interpreted by organizations that take a narrow view of the legislation to include lands that are usually farmed under normal circumstances. This we contend to be unreasonable because it prevents farmers from improving certain fields that as food sources for waterfowl provide very little benefit and are, in fact, a major nuisance to farmers throughout the duration of their short growing season in Minnesota.

The type of fields that I am talking about are usually relatively flat with intermingled depressions that contain water for a few weeks in the spring or during unusually wet periods of time. These depressions can be classified as wetlands even if the only plants that are allowed to grow there are the ones we plant. Because these areas are classified as wetlands we are unable to improve our fields through management of our land contour in an effort to make our operations more efficient.

You may be wondering why we have not improved these areas before this time. There are several reasons for this. The first is that the farming operations are becoming larger and the land is sometimes located significant distances from the central homestead, uncharacteristic of the past. This has caused a greater outlay of time and operational expenses for farmers who can seed the majority of a field but because of these nuisance spots have to delay planting a few areas. A farmer cannot wait for them to dry out, but must move to another field that is often a considerable distance away. He then must later return with all his equipment to the first field so he can seed the nuisance spots that dry up in about 10 days. Some farm programs require a farmer to plant the precise amount of his base. Since small areas of less than 2 acres cannot count as set-aside, they must be planted. In cases such as this, it has become a wise economic decision to clean these spots up. As these situations become more common, farmers will need to continue improving their operational efficiency, which is not possible under current rules.

Another reason why improvements have not been made in the past is because of smaller equipment. The current trend toward larger equipment is reducing the costs and the time needed to maintain these areas. Furthermore, we have a very short period of time that fields can actually be worked, when you consider growing seasons and early arrival of freezing temperatures.

I would like to explain my earlier claim that these nuisance spots are not as good a source for early high protein food for waterfowl, as some believe. Because these areas are routinely tilled each year and kept in productive condition to eliminate unwanted plants, there are very few insects that can live in such an environment, according to several experts in the field of entomology. These observers indicate it would be very unlikely that high populations of insects would be found in these areas. This, therefore, is why we contend that these areas present a nuisance to the farmers and are of questionable benefit to waterfowl.

Another major problem we have observed in the existing legislation is that the same excessive penalty of no program benefits on any crop base is assessed for both major and minor violations. The law is intended to stop the intentional drainage of valuable wetlands. However, under the current law, small inadvertent mistakes in land management or unintentional planting on a converted wetland will carry the same penalty as a major violation. Moreover, wetland boundaries will be determined by using aerial photos, which many observers question as a method of precise measurement. In the case of boundaries of converted wetlands and prior existing ditch depth, it would seem that it would be quite easy to inadvertently get out of compliance.

CONSERVATION COMPLIANCE

On the conservation compliance, SCS is in the process of consulting with farmers on the development of conservation plans which must be approved by 1990 for highly erodible cropland. At present, very few plans have actually been approved because of the enormous complexities involved in devising systems which are economically and technically feasible for the farmer to implement, and which at the same time meet specific conservation objectives set by SCS. These objectives are not often clearly defined by local agents when working out plans with farmers, so that application of the guidelines contained in the "field office technical guides" can vary tremendously from one soil conservation district to another.

In our view, such inconsistency is emerging as the most significant problem that must be solved in the implementation of conservation compliance rules. In order for the conservation policies established in the farm bill to be accepted by farmers, the cropping and conservation practices required of them must be reasonable and cost effective, and must be implemented in an equitable fashion. In addition, the appeals process established by SCS must be used effectively to override decisions that impose unachievable compliance requirements on farmers. We also urge SCS authorities to seek to identify local agents who are applying conservation guidelines in an overly stringent manner.

A second problem that we believe must be solved before the compliance deadline is the offsetting compliance requirement, and its repeal is one of the most important changes we urge the Congress to consider. Offsetting compliance means that the tenant operators must obtain the consent of each of their landlords to implement any management practice required by a conservation plan. In effect, the law makes the tenant operator responsible for the deci-

sions of his landlord, and requires him to pay an enormous penalty—loss of all commodity program benefits—if the landlord disagrees with a specific conservation practice required by SCS. The only other alternative is for the tenant to withdraw from the lease, if he can, and give up his right to farm that land.

SODBUSTER

We agree with USDA's recent sodbuster rule which will require producers farming "sodbusted" land to implement more stringent conservation practices than for other highly erodible lands. Under the rule, sodbusters will not be allowed to qualify for program benefits under an alternative cropping system, but will have to reach "T" on the broken out land. We believe sodbusters should be further restricted under ASCS program rules, so that they would not be allowed to use their planted acres history during the years they are not in compliance under conservation rules to determine commodity program base.

CONSERVATION RESERVE PROGRAM

Finally, the Conservation Reserve Program. Over 25 million acres of highly erodible land will be enrolled in a Conservation Reserve when the USDA announces the results of the sixth signup held last month. We believe the program to be a very beneficial one, and encourage USDA to operate the program in such a way that the annual enrollment goals set by Congress can be met. Furthermore, proposals to expand eligibility for lands that will be forced into nonproductive uses by environmental statutes should be given favorable consideration.

A final issue relating to the conservation reserve is the maintenance of commodity program bases upon expiration of the reserve contract. Present rules would require the farmer to plant his CRP acres within 1 year of the contract expiration in order to maintain his ASCS cropping history. Although it is difficult to predict what supply conditions will be when the contracts begin expiring in a few years, we believe continued conserving use should be encouraged by allowing the farmer to maintain his crop base as long as he maintains an adequate cover crop on the reserve lands.

Thank you, Senator Conrad, for considering these comments and I will be pleased to respond to any questions you may have.

[Senator Fowler's letter, Senator Conrad's questions, and responses to questions submitted by Senator Conrad follow:]

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WASHINGTON, DC 20510-8000

April 7, 1988

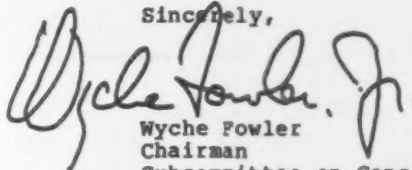
Mr. Gary Rudningen
President Minnesota Association of Wheat Growers
P.O. Box 602
Red Lake Falls, Minnesota 56750

Dear Mr. Rudningen:

I appreciate your testifying before the Committee on March 24, 1988. As I mentioned at the conclusion of the hearing, enclosed are additional questions from Committee members which are being submitted to you for written answers. I would appreciate receiving your answers to the questions by April 29 so that the hearing record may be printed as soon as possible.

Thank you for your cooperation.

Sincerely,



Wyche Fowler
Chairman
Subcommittee on Conservation and
Forestry

Additional questions for MR. GARY RUDNINGEN, MINNESOTA
ASSOCIATION OF WHEAT GROWERS, submitted by Senator Conrad

1. Do you think that farmers in your area are generally supportive of wetland preservation? Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of the land to cropland?
2. In your opinion, what impact has the swampbuster provision had on wetlands? Has it discouraged or encouraged any wetland conversion activities? Please be specific as to the source of any estimates you have on wetland conversion activities.
3. What differences have you observed in the implementation of the swampbuster and sodbuster law in North Dakota compared with other states?
4. What conclusions, if any, do you draw from USDA's record with regard to withholding farm program benefits under swampbuster?
5. In your opinion, are local USDA officials reluctant to impose a severe penalty--loss of all federal farm program benefits--if they felt that a swampbuster or sodbuster violation was minor or unintended?

Minnesota Association of Wheat Growers

PHONE (218) 253-4311
or 1 (800) 242-6118

BOX 189 • RED LAKE FALLS, MINNESOTA 56750

April 25, 1988

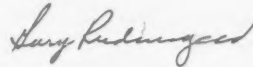
Senator Wyche Fowler
United States Senate
Washington, D.C. 20510-6000

Dear Senator Fowler:

I appreciated the opportunity to testify on the Swampbuster Provisions before your committee on March 24, 1988. In response to your April 7, 1988 letter I have enclosed written answers to the questions I received from you.

Thank you for your consideration.

Sincerely, -



Gary Rudningen
President

(1a) Question: Do you think that farmers in your area are generally supportive of wetland preservation?

Yes, I believe most farmers would be supportive of "wetland" preservation. I also believe that a farmers interpretation of a wetland would be water filled areas that are not normally farmable.

(1b) Question: Do they support the idea of discouraging future drainage of wetlands for the purpose of conversion of land to cropland?

Yes. By this answer I mean that they would support discouraging future drainage of wetlands that have not been cropped before. There are many of these non-farmable areas in Minnesota. On the other hand there are many lowlands that are usually farmed and most farmers would not support discouraging future maintenances or improvements of these lands by drainage. In other words most farmers would support discouraging future drainage which is intended to produce new croplands, however, the form of discouragement should not pertain to land that is usually cropable.

(2) Question: In your opinion, what impact has the Swampbuster provision had on wetlands?

I feel it has not had a major effect on "wetland" as of today. However many farmers in my area have a wait and see attitude about the provision. If their cropland is classified as a wetland many may choose to stay out of the farm program and continue their normal maintenance and improvement of their land.

(3) Question: What differences have you observed in the implementation of the Swampbuster and Sodbuster law in Minnesota compared with other states?

I feel the implementation of these two provisions has been about the same in the majority of the states. I also feel that Minnesota and North Dakota have unique circumstances that need to be recognized. These were discussed in my testimony.

(4) Question: What conclusion, if any, do you draw from USDA's record with regard to withholding farm program benefits under Swampbuster?

It is difficult to make a judgement because many county offices have just recently begun making wetland determinations.

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(5) Question: In your opinion, are local USDA officials reluctant to impose a severe penalty -- loss of all federal farm program benefits -- if they felt that a Swampbuster or Sodbuster violation was minor or unintended?

Definitely most officials would be reluctant to impose the stiff penalties because they know how hard it will be to stay in compliance with the regulations. However there are many different local officials and a few would probably not hesitate to impose the severe penalties in order to set examples of the implications of the provisions.

Senator CONRAD. Thank you very much. It was awfully good of you to have the patience to wait through this interruption.

Let me ask you—we've heard testimony that there are 3,000 violations outstanding in Minnesota on swampbuster. What is your reaction to that number?

Mr. RUDNINGEN. Well, in reacting to that, in the past week, I have taken upon myself to contact—and I made the contact with 56 different producers in my area, asking them their feelings concerning swampbuster and also conservation compliance, and of the 56 farmers I visited with, 45 of them have a wait-and-see attitude. In other words, they are going to wait to see what determinations they receive from SCS on the swampbuster or on their conservation compliance. If it doesn't fit into their practice or something that they don't want to go along with, they are going to drop out of the program completely.

And a question was asked of me, "Well, how can these 45 farmers not comply with the program, financially?" And in response to that, I said, that with the high number of farmers that have been flushed out the past 2 or 3 years—the higher leverage farmers we now have the the stronger, financially sufficient farmers out there, and those people can, through alternative marketing plans, see fit to stay out of the program. They are going along with the program to help cut down the surplus, but if it is going to cost them hardship by doing this, they are not going to comply with the program.

Two didn't care. They said it didn't make any difference to them because they are retiring in 2 years, anyway. And nine of them had to go along with the program because of financial reasons; that they were strapped to it.

So, I guess, from my point of view, I think we are seeing a lot of people that have just a wait-and-see attitude and, if it doesn't fit into their program, they're just going to say, "Fine, we're going to get along without the program."

Senator CONRAD. In your judgment, in light of that answer, what would be the effect if we were able to take care of this nuisance spot problem? Do you think that would, in regard to swampbuster, would that take care of a substantial part of the problem?

Mr. RUDNINGEN. I believe it would.

Senator CONRAD. And if coupled with a move to have some graduated penalty rather than to have this drop dead penalty that we have now, would that be something that, in your judgment the people that you talked to would be eager to see happen?

Mr. RUDNINGEN. Yes, I believe it would. I looked at the picture that we've been referring to a number of times this morning and afternoon, and I feel that, with my digger, if I should happen to turn and leave the shovel—leave a trench out of there, I could be out-of-compliance, because I am draining that wetland or that depression area. And those are the areas the farmers are just saying, "Hey, we're not going to take any chances of losing everything. So, we're better off not going with the program at all."

Senator CONRAD. Really, it just strikes me, at least, looking at that picture of a nuisance spot—I have another copy here—you know, this picture is a wetland. I think we would all acknowledge, that's a wetland. It ought to be preserved. It is critical habitat for ducks. The farmer that sent me these pictures made that observa-

tion and said he agrees; this shouldn't be touched. That's exactly what we ought to preserve.

This is a nuisance spot, and when we tell farmers they are going to have to preserve this, it just won't fly. It's not reasonable. They know it's not reasonable. No amount of academic talk down here is going to change that. They know that's just not serious.

This other picture that was sent to me is absolutely dry. This is a wetland under the regulations of USDA. You don't see a drop of water here. This is a swamp according to swampbuster. Now, you know, it's ridiculous. That's no swamp. There's not a drop of water here.

And the gentleman who sent me this picture—he is a good friend of mine—said, “Kent,” he said, “you know I haven't seen any water on there except one time in 7 years when we got 7 inches of rain in a day.”

Now, you know, we've got to hopefully get people—excuse me—7 inches of rain in 2 days. We have to be reasonable, it seems to me, on both sides in order to have some accommodation.

Let me bring this hearing to a close. We're almost at 5 o'clock, and this has been an exceptionally long hearing. In fact, in the 15 months I have been in the U.S. Senate, we've not had a hearing of this length, and we've covered some weighty issues. I sometimes think we would be better off having more of these sessions. I think we have laid on the record here quite clearly what the issues are; what the positions are of the various parties.

We received some very good news this morning, I think, in the ASCS's announcement that they were going to alter the penalty provisions to include their “failure to fully comply” provisions. That's a step in the right direction. I think we ought to salute them for it, and I think we ought to commend them and stand with them on that decision. That's a step in the right direction. I am very hopeful that the other parties that are interested in this issue will agree with that.

In addition, we have talked about the nuisance spots. And obviously with certain of the groups represented here we've had a very clear difference on the question of the nuisance spots. We've tried to lay on the record with great clarity the legislative history. The legislative history, I think, is abundantly clear. Congress thought they were dealing with lands that would be converted in the future. Those that had been previously cultivated, I'm convinced, most thought would be exempt, and the very language itself suggests that, “swampbuster.” Nobody thought that meant that you were going to be dealing with anything other than swamps, bogs, and marshes—water holes that were fairly permanent in nature.

And so, I think we've started to lay on the record a clear case for some alteration here. Hopefully, this can be dealt with administratively. To the degree it cannot be dealt with administratively, those of us who feel strongly about it will be left with little choice other than to deal with it legislatively. But it is our intention to make sure that these provisions of the Food Security Act of 1985 are reasonable. And we have concentrated to a great degree on swampbuster and sodbuster today, but the other compliance provisions, as well, need review.

Now, let me just conclude by saying I want to thank all of the witnesses that have appeared today. I want to thank everyone for being frank and forthcoming. I think this is the kind of communication that we need in order to approach a solution.

I was very pleased to hear some of the environmental groups make a commitment and indicate a willingness to come to our State and see in the field what's happening.

I am convinced that a lot of our problem around here is we talk past each other and nobody really knows what you mean when you say "a nuisance spot." Well, I think we will be able to demonstrate that, if we are able to come out to the State and have representatives of some of these organizations see it firsthand.

And let me conclude by saying we will leave the record open for additional questions and testimony. We intend to do that for at least 1 week. So, if there are further comments or testimony we will include that.

I am adding to what I have entered into the record today a letter from Milt Hertz, the Administrator of the SCS, on the question of penalties and I now enter that into the record in addition to the other letters on penalties that I have entered earlier.

[The letter of Mr. Hertz follows:]



United States
Department of
Agriculture

Agricultural
Stabilization and
Conservation Service

P.O. Box 2415
Washington, D.C.
20013

MAR 23 1988

Honorable Kent Conrad
United States Senate
Washington, D.C. 20510

Dear Senator Conrad:

Thank you for your letter concerning implementation of the "swampbuster" provisions of the Food Security Act of 1985.

You are correct, there is some discretion in the process of determining whether or not a violation of the rules has occurred. The Agricultural Stabilization and Conservation Service (ASCS) has responsibility for determining whether the conversion of a wetland was commenced or completed prior to December 23, 1985. The final rule on swampbuster allows farmers until September 19, 1988, to make a request for a commenced determination.

In a case where a farmer has drained one small wet spot out of perhaps dozens on his property, ASCS will request the Soil Conservation Service (SCS) to make a minimal effect determination. If SCS determines that the draining of the one small wet spot will have only a minimal impact on the hydrological and biological aspect of wetland, the farmer will be eligible for the Department of Agriculture (USDA) program benefits. On the other hand, if SCS determines minimal effect does not apply, the farmer will be ineligible for USDA program benefits on that farm and all other farms in which he has an interest.

Again, thank you for writing.

Sincerely,
/s/ Milton Hertz

Milton Hertz
Administrator



Senator CONRAD. And with that, I will declare this hearing adjourned.

[Whereupon, at 5:05 p.m., the subcommittee adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

ATTORNEY GENERAL

STATE OF NORTH DAKOTA
State Capitol
Bismarck, North Dakota 58505

701-224-2210

Nicholas J. Spaeth
ATTORNEY GENERAL

January 21, 1988

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Consumer Fraud
and Antitrust Division
701-224-3404
800-472-2690
Toll Free in ND

Criminal Justice
Training and
Statistics Division
701-224-2594

Fire Marshal
701-224-2434

Gaming Division
701-224-4848

Licensing Division
701-224-2211

Division Offices
Bismarck, ND 58502
Bureau of Criminal
Investigation
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701-221-6100
800-472-2165
Toll Free in ND

Drug Enforcement
Unit
P.O. Box 993
701-221-6166
800-472-2165
Toll Free in ND

The Honorable Charles Mertens
Member of the House of Representatives
718 Seventh Street
Devils Lake, ND 58301

Re: Testimony to the Senate Committee on Appropriations,
Sub-committee on Agriculture, Rural Development and
Related Agencies

Dear Representative Mertens:

Attorney General Nicholas Spaeth has asked me to respond to your request for an analysis of the defects in the publication process used by USDA to implement the wetlands conservation ("Swampbuster") provisions of the Food Security Act of 1985.

The Swampbuster Regulation Publication Process

The Food Security Act (the Act) was adopted on December 23, 1985. Pub. L. 99-198, 99 Stat. 1525. The provisions relating to wetland conservation are found at Subtitle C of the Act. Section 1244 of the Act required the Secretary of Agriculture to issue regulations not later than 180 days after the effective date of the Act (or June 24, 1986). Interim rules were not published until June 27, 1986, with an effective date of June 24, 1986. 51 Fed. Reg. 23495-23514. No prior public comment was allowed. Id. After publication of the interim rule, USDA solicited comments for 60 days. Id. Final regulations were not

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published until September 17, 1987. 52 Fed. Reg.
35194-35206.

By law, USDA was required to consult with the Department of Interior prior to publication of regulations. See § 1223 of the Act. USDA consulted with the Fish and Wildlife Service as is shown by the List of Preparers provided as an Appendix to the June 1986 "U.S. Department of Agriculture Environment Assessment for the Wetland Conservation Provisions of the Food Security Act of 1985)".

By law USDA was also required to consult with the public before issuing regulations. As explained below, USDA disregarded this obligation.

Overview of the Administrative Procedure Act

The Administrative Procedure Act (APA) was adopted in 1946 to establish uniform, procedural rights to the public that must be followed by administrative agencies before they may publish regulations having the force and effect of law. 5 U.S.C. § 551 et seq. Under the APA, informal notice and comment rulemaking is governed by 5 U.S.C. § 553.

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The courts have recognized that "the APA provisions reflect a judgment by Congress that the public interest is served by a careful and open review of administrative rules and regulations." Alcaraz v. Block, 746 F.2d 593, 610 (9th Cir. 1984) (quoting Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 881 (3rd Cir. 1982)). The United States Court of Appeals for the Ninth Circuit has written:

This [APA] framework creates a pre-publication dialogue which allows the agency to educate itself on the full range of interests the rule affects, . . . and reintroduces a representative public voice, thus ensuring "fairness to affected parties after governmental authority has been delegated to unrepresentative agencies," . . . through sensitive, efficient governmental decision making. See generally, Stewart, The Reformation of American Administrative Law, 88 Harv.L.Rev. 1667, 1676 (1975) ("Insofar as statutes do not effectively dictate agency actions, individual autonomy is vulnerable to the imposition of sanctions at the unrulred will of executive officials . . . who are not formally accountable to the electorate.").

Alcaraz v. Block, 746 F.2d 593, 611 (9th Cir. 1982)
(citations omitted).

The APA first requires that general notice of a proposed rule shall be published in the Federal Register. 5 U.S.C. § 553(b). This notice shall include either the terms or substance of the proposed rule or a description

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of the subjects and issues involved. 5 U.S.C. § 553(b)(3). Two exemptions from the prior publication requirements are provided: "(A) to interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. 5 U.S.C. § 553(b)(A)-(B).

After the advance notice required by § 553(b), the agency shall give interested persons the opportunity to participate in the rulemaking through submission of written data, views or arguments with or without opportunity for oral presentation. 5 U.S.C. § 553(c). After consideration of the relevant matter presented, the agency shall incorporate into the rules adopted a concise general statement of their basis and purpose. 5 U.S.C. § 553(c). Finally, a substantive rule is to be published not less than 30 days before its effective date with three exceptions: (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules or statements of policy; or (3) as otherwise provided by the agency. Id.

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In summary, unless an agency rule falls within one or more of the enumerated exemptions, an agency must:

- (1) Publish a proposed rule in advance of adoption;
- (2) Allow and consider public comment;
- (3) Issue a statement of basis and purpose on adopting of a rule; and
- (4) Allow at least 30 days before a final published rules becomes effective.

USDA and its Agencies are Subject to Notice
and Comment Rulemaking Under the APA

Before discussing the procedural validity of the Swampbuster rulemaking, it is important to note that USDA has administratively removed itself and its constituent agencies from the exemption of 5 U.S.C. 553(a)(2) for "a matter relating to . . . public property, loans, grants, benefits or contracts."

In 1971, the Secretary of Agriculture stated as a policy that all agencies of the Department of Agriculture will follow the public participation requirements prescribed by 5 U.S.C. § 553(b) and (c) in rulemaking relating to public property, loans, grants, benefits, or contracts. 36 Fed. Reg. 13804 (July 24, 1971). In adopting its policy, the Secretary said:

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The advantages of implementing the conference's recommendations that the public be afforded an opportunity for greater participation in the formulation of rules relating to public property, loans, grants, benefits or contracts will outweighs any disadvantages such as increased costs and delays." 36 Fed. Reg. 13804 (July 24, 1971). Moreover, the Secretary said that the "good cause" exemption to prior publication should be used "sparingly that is, only when there is a substantial basis therefore." Id. (emphasis added.)

Since its 1971 statement that it would be bound by notice and comment rulemaking, USDA and its agencies have repeatedly been held to those standards by a number of courts. Rodway v. USDA, 514 F.2d 809 (D.C.Cir. 1975); Alcaraz v. Block, 746 F.2d 593, 611 (9th Cir. 1984); Arlington Oil Mills, Inc. v. Knebel, 543 F.2d 1091, 1095 and n.6 (5th Cir. 1976); South Carolina v. Block, 558 F.Supp. 1004, 1012-1013, (D.S.C. 1983); Reyes v. Klein, 411 F.Supp. 1241, 1245 (D.N.J. 1976); Anderson v. Butz, 428 F.Supp. 245, 249 (E.D. Cal. 1975).

Procedural Defects in Publication
of the Swampbuster Regulations

The first defect in publication of the Swampbuster regulation is that USDA failed to publish proposed Swampbuster regulations for comment by the public. Instead, USDA worked solely with its own employees and employees of the US Fish and Wildlife Service to draft a

The Honorable Charles Mertens
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so-called "interim" regulation which became effective 3 days before it was published.

As a result, farmers and farm organizations were unable to provide relevant facts or suggestions to USDA that might have influenced USDA to address some of the farmers' concerns with respect to implementation of the Act.

USDA claimed that 180 days provided insufficient time to allow public comment. See 51 Fed. Reg. 23496. However, the courts have generally rejected agencies' claims of time pressures as a valid excuse for failing to comply with the APA.

Exemptions to the notice and comment publication requirements of 5 U.S.C. § 553 are to be "'narrowly construed . . . and only reluctantly countenanced.'" State v. N.J. v. U.S. Environmental Protection Agency, 626 F.2d 1038, 1045 (D.C. Cir. 1980).

The Eighth Circuit, in construing the "good cause" exemption to the 30-day requirement of 5 U.S.C. § 553(d), said "the good cause exemption was not to be an 'escape clause which may be arbitrarily exercised but requires legitimate grounds supported in law and fact by the

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required finding. Legitimate grounds were defined as "urgency of conditions coupled with demonstrated and unavoidable limitations of time." U.S. v. Gavrilovic, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting 92 Cong. Rec. 5650-51 (1946) (remarks of Cong. Walter)). (Emphasis supplied).

Other courts have noted that the exceptions may not be arbitrarily utilized at the agency's whim but rather should be limited to emergency situations. See American Federation of Government Employees v. Block, 655 F.2d 1153, 1156 (D.C. Cir. 1981) (citing S. Rep. No. 752, 79th Cong., 1st Sess. (1945)). Nor should the "good cause" exception be used to circumvent the notice and comment requirements whenever an agency finds it inconvenient to follow them. U.S. Steel Corp. v. U.S. Environmental Protection Agency, 595 F.2d 207, 214 (5th Cir. 1979).

In this instance, USDA had six months to effect regulations to implement the Swampbuster part of the Act. This six month period should have been adequate to permit publication of a proposed rule and to allow public comment.

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USDA's Allowance of After-the-Fact Comments
was Not Adequate Compliance with the APA.

In its June 27, 1986 announcement of the interim Swampbuster rules, USDA said that the public could file comments on the interim rule on or before August 26, 1986. See 51 Fed. Reg. 23496.

USDA thereafter received 2696 letters contained 8400 comments. See 52 Fed. Reg. 35195 (Sept. 17, 1987).

However, USDA's consideration of these comments was inevitably affected by the fact that the regulations had already been in place for two crop years by the time USDA completed evaluation of the comments and published final rules based on the comments.

USDA had already invested a considerable amount of time and money on implementation of the interim rules before it completed evaluation of the comments. To illustrate this point, USDA announced on the publication date of the final regulation that it had already "developed fact sheets, brochures, displays, radio and television spots, news releases and other media material which are being used to better inform landowners and operators of the

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conservation provisions of the Act." 52 Fed. Reg. 35195
(Sept. 27, 1987) (Emphasis supplied.)

It is because of an agency's reluctance to change regulations already in force that the APA requires prior publication of proposed regulations. Generally, allowance of after-the-fact comments does not remedy a failure to allow prior comment. As stated by the Eighth Circuit Court of Appeals:

Provision of prior notice and comment allows effective participation in the rulemaking process while the decisionmaker is still receptive to information and argument. After the final rule is issued, the petitioners must come hat-in-hand and run the risk that the decisionmaker is likely to resist change.

U.S. Steel Corp. v. EPA, 649 F.2d 572, 576 (8th Cir. 1981) (quoting Sharon Steel Corp. v. EPA, 597 F.2d 377, 381 (3rd Cir. 1979).

Conclusion

Farmers have identified many difficulties with the Swampbuster regulations. These difficulties include the definition of a "wetland", USDA's failure to complete timely soil surveys, USDA's imposition of immediate penalties for alleged violation of the regulation before an appeal can be completed, the interpretation of the

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"minimal effect" provision of the Act, and USDA's use of forms that are confusing and misleading. It is quite possible that these concerns and other could have been positively addressed before the regulations became effective if USDA had followed the APA in the publication of its Swampbuster regulations by publishing proposed regulations, by allowing public comment to be considered before the regulation went into effect, and by having a delayed effective date so that the public would have a period of time to adjust to the new regulations.

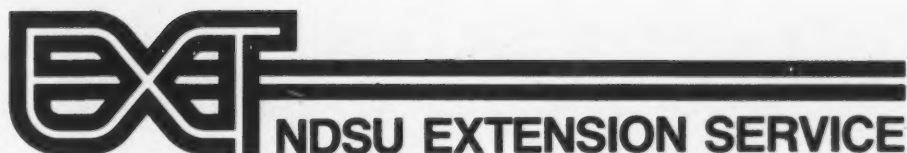
If I can be of further assistance to you or the committee, please do not hesitate to call or write me.

Sincerely,

Sarah Vogel

Sarah Vogel
Assistant Attorney General

vkk



Plant Science - Soils

North Dakota State University, Box 5575, Fargo, ND 58105
(701) 237-8881

March 16, 1988

Senator Conrad
Room 361
Dirksen Building
1st and Constitution Ave. N.E.
Washington, D.C. 20510

Dear Senator Conrad:

Attached are copies of materials I prepared for wetlands hearings in North Dakota.

Request for this information originated with Dave Woods.

Yours truly,

Carl Fanning
Carl Fanning
Extension Soils Specialist
North Dakota State University

CF/jh
Enclosure

Helping You Put Knowledge To Work

North Dakota State University - U.S. Department of Agriculture and County Commissioners Cooperating
NDSU is an equal opportunity institution

Red River Valley Wet Lands As A
Production Management Factor

Carl Fanning, Extension Soils Specialist
(North Dakota State University)

Recent geologic history of the Red River Valley as a shallow fresh water lake predisposes the area to surface drainage problems. However, the Valley has been farmed for almost a century and with time has developed an effective but not particularly efficient drainage system.

Public Fund Drainage Systems

The county road system, with graded ditches to protect road beds, is the mainstay of the Red River Valley drainage network. This is complemented and enhanced by public funded drain ditches that collect and moves water across country through intermittent channels and depressions.

With county road ditches as exceptions, other public drains in the valley have been installed on a need and funds available basis. Diking, to contain channel flow along major stream courses and in local areas, to control cross country sheet water flow, has occurred through the same time period. The combined ditching - diking system functions with variable efficiency among communities.

Local interests have dominated. A comprehensive, efficient, overall drainage design to maximize the areas production potential was not developed in the early history of the area. Later designs have retained the inefficiencies of existing systems.

Private Fund - Field Drainage

Tile drains are rare in the Red River Valley. The dominant problem is surface wetness that delays spring work and early seeding. Initially the least expensive and most efficient surface drainage technique was to plow fields in parallel strips building a central crown and a dead furrow drain.

In many fields the parallel strip, crown and dead furrow surface drainage system has existed in place since county roads were installed. Water removal efficiency with these parallel strips has often been improved with earth moving equipment to deepen and widen the dead furrow using removed earth to increase the crown.

Maintenance of the dead furrow drain by removing accumulated silt at the road ditch outlet is a common fall work chore. Mold board plowing has diminished as the primary tillage method but the surface drainage system still exists and is maintained in other tillage systems on an as needed basis.

Similarly, mold board plows were used to build dead furrow drains between minor depressions in irregular patterns across fields. These also exist in their original pattern with periodic maintenance, usually at the road ditch outlet.

Land Leveling

Fields leveled to a uniform grade with a tail water collecting systems are found in local areas across the Red River Valley. The inherent flatness of the lake bed soils has encouraged engineering this surface water management practice. Elevation change in the landscape is modest. Depressions that collect water and delay field work seldom exceed elevation differences of a foot. Most are less than 6 inches. However, the cost and benefits of land leveling when compared with crown and furrow drainage has limited its adoption.

Benefits - Field Surface Drainage

It should be recognized that intent in Red River Valley surface drainage is to manage spring thaw water in a manner that allows seeding and harvesting for an entire field. Drainage system depressions are shallow and intended to be farmed across.

The production management benefits from surface drainage is dominated by two factors, both with significant economic impact. Early seeding and field work time use efficiency.

Wet depressions in a growers field either delays field work until the entire field is dry or requires equipment be moved back to the field at a later date to complete work on small irregular shaped patches. Moving back into field is often accompanied by considerable down time remounting or changing equipment after completion of other chores.

Yield loss accompanies delayed seeding in addition to time use inefficiencies during a heavy work load period. When the peak seeding time for small grains is missed yields drop about 1% for each day of seeding delay. The combined yield loss - added labor and machines use inefficiency cost can be significant.

Example

A 600 acre small grain operation that requires returning to a field following a 10-day delay to finish preseeding tillage on 100 acres also seeds, sprays and harvests on a delayed schedule. yield loss and added costs as follow may occur.

(100 A x 50 Bu/A x \$2.50/Bu) x 10% yield loss	= \$1,250.00
(100 A x \$24.00/A repair, fuel & labor) x 10% added cost	= \$ 240.00
Total 100 Acre loss	\$1,490.00

In operations where the examples series of facts apply wet ground reduces gross return \$14.90/A. Good managers in the Red River Valley are disturbed with losses half this value.

Asset Value Loss

Two factors dominate as wet land management problems with direct impact on asset value in the Red River Valley. These are a) potential for yield loss from delayed seeding and b) salinization from uncontrolled high water tables. Technically, both can be resolved and the production potential or the lands asset value improved with properly designed drainage systems. However, drainage as an asset improvement tool and landowner choice based on return from the drainage investment has been abrogated with interpretation of the 1985 Food Security Act.

Salinization is a special problem with potential for uncontrolled localized growth under current provisions of the food security act. The process where capillary water from a saline water table rises to the surface, evaporates and leave salt behind can take several years to salt out ground. Mistakes in designed drain depth that ponds water or raises water table levels along a drain take several years to develop into a salty ground problem. Deepening drains corrects the problem. The 1985 Food Security Act fixes drain depth in perpetuity at the original design levels.

Evidence that this problem can be serious is easy to find in the Red River Valley. Salty ground in a linear pattern parallel to county road ditches across poorly drained areas is a common feature. In the past county funds have been used to correct this problem through deepening drains or cleaning silted in drains.

Public Agency Liability

Legislative attention needs to be given to the potential for public liability for land damage through salinization along public drains. Clearly, local government bodies are exposed, without recourse, for damage caused by drain designs they may not be able to correct under provisions of the 1985 Food Security Act.

New Drain Design Tool

Salinization rate in a high water table area is time and salt concentration dependent. Past research on the salinization problem has focused on aspects of drain depth design to control water table elevations. This approach has had practical advantages and operated under available public funds and suitable drain outlet constraints.

Recent research at North Dakota State University and the University of Minnesota provides tools for evaluating effects of ground water levels and salt concentration on eventual concentrations found at the soil surface.

This work has practical application for use with existing engineering design criteria. Appendix 1 shows water table depth has controlling impact on salinization. Also, eventual salt concentration at the soil surface above a shallow water table can be accessed with the following straight line equation.

$$\text{Surface concentration}^* = 17161 - 338 (\text{sp}) + 860 (\text{c}) + 0.34 (\text{Ec})$$

Where: sp = soil texture factor

c = climate factor

Ec = Electrical conductivity of the ground water

*Identification of Critical Depth and Critical Salinity of the Ground Water on North Dakota High Water Table Crop Land, Seelig, Carcana and Maianu, NDSU Research Project Technical Completion Report, Project #03, 1987.

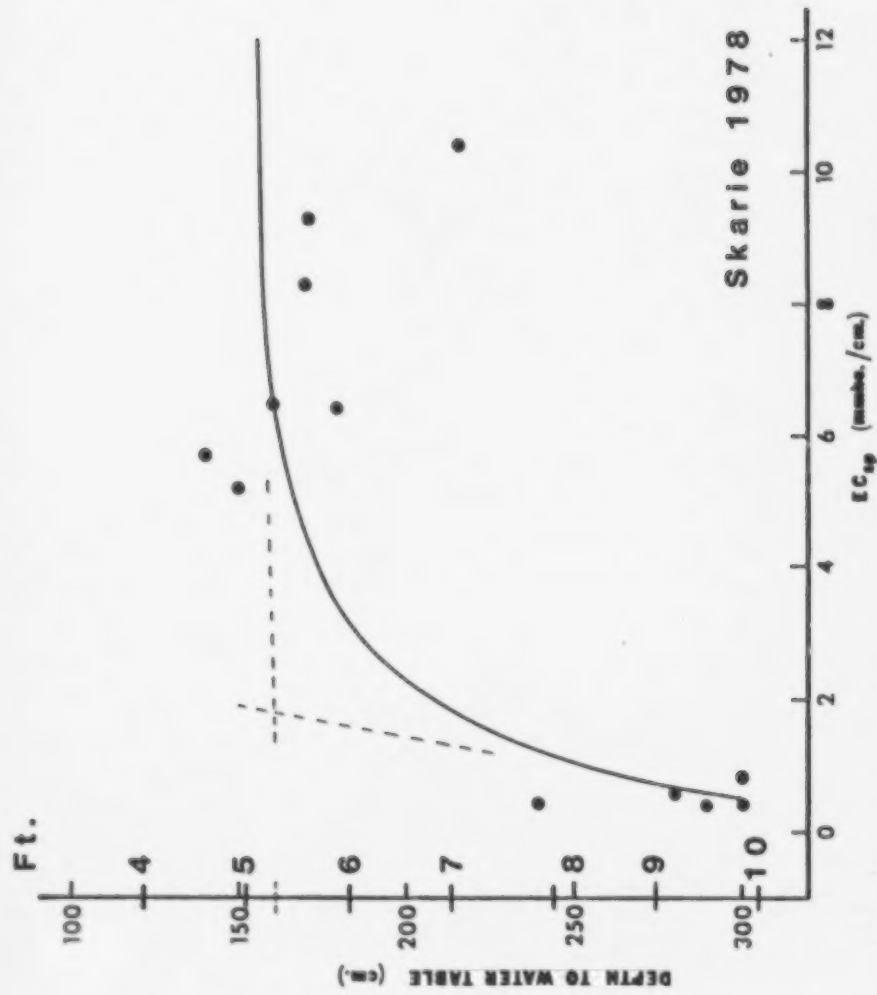


Figure 6. Relation of water-table depth (1/19/77) and electrical conductivity of surface horizon for 12 sites in Clay County, Minnesota.

High Water Table Soil Management Problems - Devils Lake Basin

Carl Fanning, Extension Soils Specialist
North Dakota State University

Soils in the Devils Lake Basin are unique in that they occupy a landscape with an abundance of small enclosed basins, low topographic relief and slow surface drainage. This combination produces a high water table across much of the area and a series of production management problems that increase management risk.

The elevation of the water table surface fluctuates seasonally with lowest elevations measured at harvest and end of the crop water use period. In areas with undeveloped surface drainage, the seasonal fluctuation seldom exceed 4 ft. Adequately drained or when dry enough for timely seeding soils in the Devils Lake basin are among the states more productive.

Risk and Asset Loss

Increased risk accompanies production on high water table lands from excess water at seeding time and the yield losses common from a shortened growing season, poor stands and the increased weed and disease pressures late seedings endure.

Those areas with developed surface drains dry earlier and have few production problems. In addition farm units with surface drainage have higher asset value and potential for increased management flexibility the assets offer in production loan negotiations.

Salinization Potential

High water table soils in this rainfall and climate area also have a salinity hazard in addition to production management problems. Evaporation potential exceeds annual precipitation and on sites where capillary rise from a shallow water table evaporates on the surface the soils become salty. This destroys a farms crop production potential and the lands asset value.

Potential for salinization exists any time capillary rise from shallow ground waters extends upward into the rooting zone depth. Salts in ground water remain behind when water either evaporates or is used by crops. The salts remain at the water loss point. In medium and fine textured soils, salts will accumulate at the surface from a water table 4' deep. This also means salts can accumulate within a 4' rooting depth from a water table 8' deep.

Natural Salinity Control

Natural salinization control exists only as adequate rainfall to leach existing salts down. When salt levels in ground waters are low and the top of the capillary fringe is deep in the rooting zone, normal precipitation and seasonal water recharge is adequate to keep the rooting depth salt free. However, even modest salinity in the ground water can cause rooting zone salt accumulations that persist.

Ironically, regional salinization decreases in a drought cycle and increases in high rainfall seasons. In drought, water tables lower and rain leaches salts to the depth it penetrates in a dry soil. An extended, multi season drought has potential to free the surface horizons of salts. These normally accumulate at a shallow depth within the profile. Crops germinate well on these sites but can have a restricted rooting depth and be dependent on timely growing season rain for profitable crops.

A single wet season event and an elevated water table will move more salts up than a several season drought has potential to move down. Hence, once land has salted out the potential is for it to stay salted out.

Excess surface water in some low areas helps to control salinization in low or ponded areas by forcing additional water down through the profile. However, excess water is a two edged sword. Extra water added through the profile in low relief topography raises the water table and can dramatically increase the size of a salt affected area. Drainage as a salinization management tool works because it offers potential to lower a high water table.

Management

Management can be a salt control factor. Recropping in lieu of fallow to keep stored water levels in the soil low increases potential for rainfall to move salts down. Similarly, less water runs off recrop land than fallow increasing the total water available to move salts down.

Using long growing season, deep rooted crops in high water table areas is an excellent water table control tool. Sunflowers in lieu of small grains is an example of this management alternative.

Deep rooted perennial crops can be even more affective than deep rooted commodity crops. The water use period on perennial crops is longer and potential for water table depth control is enhanced. Alfalfa or a number of salt tolerant grasses can be an acceptable management choice on high salinity risk sites.

Profit potential on any high salinity risk site is low and prudent management demands input costs be kept low.

Region perspective

Wetlands have a regional economic impact that cannot be ignored. In terms of commodity crops, livestock and livestock forage production the impact is negative. These are the asset owners marketable products. The total value of owners assets and marketed products comprise the areas taxation base.

Table 1 provides an accessment of high water table lands in Ramsey County, a portion of the Devils Lake water shed. The magnitude of acres affected by surface floodings, salinization and a seasonal high water table reflect risk in agricultural production, the regions economic base.

Wet Ground Problem Soils - Ramsey County, ND

Soil Series (Mapping Unit)	Water Table* Less than 6" (Acres)	Management Problem Surface		Production Use	
		Flooding	Saline	Pasture	Cropland
Tonka	4,440	X	X		X
Parnell	26,180	X		X	
Southam	20,220	X	X		X
Grano	3,770	X			X
Fargo	2,075				X
Colvin	2,120	X		X	
Colvin	9,610		X		X
Colvin	4,945				X
Svea-Barnes	33,570				X
Svea-Soux	12,685				X
Svea-Buse	74,530				X
Hamerly-Svea	30,540				X
Vallers-Hamerly	75,550		X		X
Vallers	7,865		X		X
Hamerly-Cresband	75,445		X		X
Svea-Cresband	6,950		X		X
Vallers-Parnell-Tonka	28,135		X		X
Ebden	790				X
Svea	3,900				X
Glyndon	855		X		X
Aberdeen	6,430		X		X
Overly	2,765				X
Bearden	10,120		X		X
Colvin-Aberdeen	3,785		X		X
Fargo-Hegne	23,385				X
Hegne	6,890	X	X		X
Hegne	9,010		X		X
Aberdeen-Fargo	3,865		X		X
Towner	1,870				X
Hamerly-Renshaw	2,535				X
Divide	3,355				X
Ojata	990		X	X	
Lallie	3,805		X		X
Lallie	1,720	X	X	X	
Minnewaukan	720		X		X
Mauvais	4,785		X		X
Great Bend-Overly	755				X
TOTAL	510,960	65,340	281,190	31,010	479,950
Percent of Wet Ground Acreage		12.8%	55.0%	6.0%	93.9%
Percent of County Acreage (837,760)	61%	7.8%	33.6%	3.7%	57.3%

Source: Soil Survey of Ramsey Co., North Dakota

* The table rises to less than 6" of the surface at some point during the year in a normal production season.

**These soils will pond water to a depth in excess of .5" in a normal production year.

Short Term Relative Wetness Evaluation

An assessment of relative seeding season wetness for the 1982-87 crop production seasons is available in SF-760 (revised). This NDSU Cooperative Extension Service publication included as attachment 1 show 4 of the past 6 seeding seasons in the Devils Lake watershed have started with the soil profile well charged with a crop water supply.

AVAILABLE SOIL WATER IN NORTH DAKOTA AS OF NOVEMBER 13, 1987

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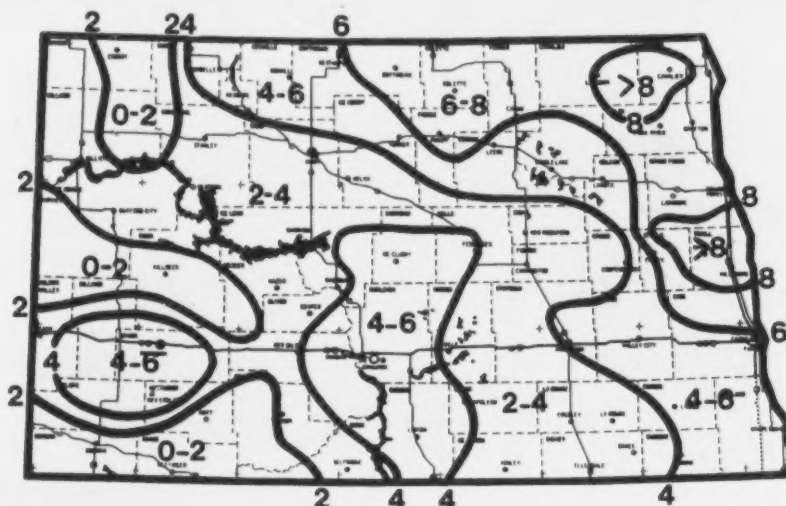
Rainfall and Available Soil Water

Topsolls across North Dakota were dry last fall because of sparse autumn rain. Most of the soil water recharge for the 1988 crop occurred in areas with above average July and August rainfall. The total stored water supply is down from the exceptionally high levels available for the 1987 crop. Large areas in western counties have extremely low stored water levels and face the uncertainties of drought management for the 1988 crop season.

The dry topsoil conditions mean that overwinter snow accumulation and spring rains will be critical factors to

provide adequate seedbed water for germination next spring. This is true for both fallow and recrop land. Since tillage causes rapid drying of the tilled soil, farmers should consider minimizing their spring tillage operations in order to conserve soil water and improve stands. For example, tilling and seeding both recrop and summer fallow with one operation conserves available seedbed water and can improve germination.

Normally, comparison of stored soil water measured at field sites with September and October rainfall at nearby recording stations allows soil water data to be extended to other rainfall stations where soil samples were not obtained. This year, however, stored soil water at several loca-

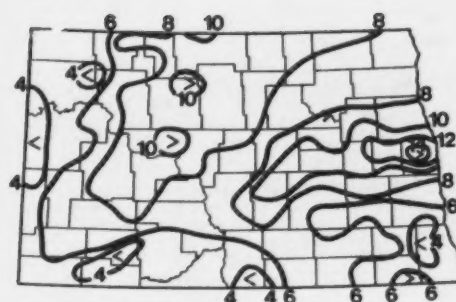


Available soil water (inches) on stubble land, November 13, 1987.

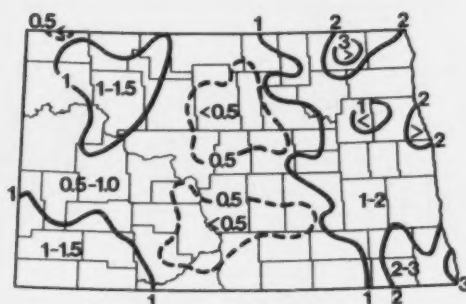


NDSU EXTENSION SERVICE
North Dakota State University, Fargo, ND 58105

14 AGR-8



Total rainfall (inches) July and August, 1987.



Total rainfall (inches) September and October, 1987.

tions related only with July and/or August rainfall. In some regions soil water has carried over from last year because the 1987 crops did not use all that was available due to disease or other problems.

Survey Results

Results of the 1987 soil water survey of stubble ground are shown on the accompanying map. Approximate percentages of land containing various amounts of stored soil water to a depth of 48 inches are listed below.

<2 inches	12%
2-4 inches	38%
4-6 inches	35%
6-8 inches	12%
>8 inches	3%

Stored water on land that was summer fallowed in 1987 is generally good to excellent statewide because of abundant precipitation during the fall of 1986 and the late summer of 1987.

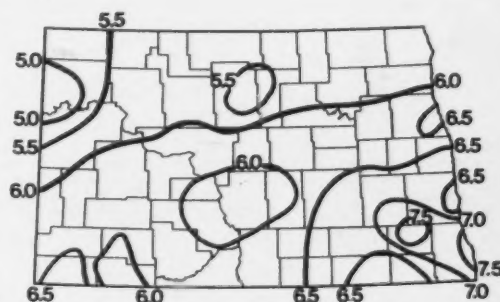
Crop Production Assessment For 1988 — Stubble Ground

The general outlook for statewide crop production on recrop is about average. Small grains require at least 8 inches of water to produce a harvestable crop. This water is supplied from growing season rainfall and stored soil water. Research has shown that 4 inches or more of stored soil water at seeding is necessary to insure harvestable yields in most years. Under typical conditions, soil water will be enhanced by November precipitation and spring snowmelt; however, there was little November 1987 precipitation. Snowmelt can be especially effective in the drier areas if efforts are made to trap snow where it falls.

About 50 percent of the state's soils have 4 inches or more stored water as of November 13, 1987. Outlook for these areas is good. Cautious optimism must accompany yield expectations in areas with only 2-4 inches of stored soil water. Recharge from winter snowmelt and/or spring rain will be necessary in these areas. The outlook for regions with less than 2 inches is not good, but snowmelt and spring rains can still enhance stored soil water. Timely growing season rainfall or limiting production to previously fallowed fields may be necessary to achieve average yields in these regions.

The probability of receiving various amounts of rainfall during the growing season can be used with soil water data to assess future crop yields for planning purposes. The rainfall probability map shows the minimum amount of rainfall that has fallen during a typical growing season in 70 percent of the years. This means that in seven out of 10 years, growing season rainfall of at least 6 inches is expected over most of North Dakota. Therefore, on soils with at least 4 inches of stored water there is a 70 percent chance that at least 10 inches of water will be available to the crop. Recent research data indicate that if 10 inches of water is used by the crop, about 25 bushels of spring wheat per acre will be produced. Each additional inch will produce another 5 bushels of wheat per acre. Producers are urged to soil test their land for nitrate to assure an adequate supply of nitrogen for the 1988 crop.

Stored soil water is extremely variable in fields because of slope and cover conditions. Producers are encouraged



Rainfall probability (inches) from April 12-July 11 equalled or exceeded in 70% of the years.

to check fields in the spring to determine the moist soil depth and estimate plant available soil water.

Guidelines for estimating available soil water from moist soil depths along with additional probability maps including different time periods, precipitation amounts, and probability levels are available in Bulletin #356, SOIL WATER GUIDELINES AND PRECIPITATION PROBABILITIES IN MONTANA AND NORTH DAKOTA. This bulletin can be obtained by writing to: Bulletin Room, Box 5655, North Dakota State University, Fargo, North Dakota 58105.

Crop Production Assessment For 1988 — Fallow Ground

The overall outlook for crop production on land fallowed in 1987 is good to excellent. Abundant rainfall during autumn 1986 and July and August 1987 has filled most fallow soil profiles to field capacity. Producers are urged to soil test their fallowed land for nitrate to assure that an adequate supply of nitrogen is available for the 1988 crop.

How Samples Were Collected

Soil scientists from the Soil Conservation Service collected soil samples to a 4-foot depth across the state during the first week in November. Fields were sampled along five east-west transects at 25-35 mile intervals. Sampling sites were in fields with standing small grain stubble or stubble that had been fall tilled. Additional samples were obtained from experiment stations and NDSU field trial sites. Sampling was restricted to medium-textured soils with high available water storage capacity on gently sloping or nearly level sites. Locations where water ponded or runoff occurred were avoided. The soil samples were weighed and oven dried and calculations made to determine available stored water.

Local Influences Affect Soil Moisture Storage

This survey provides a general overview of stored soil water in the state. These data are only representative of gently sloping, medium-textured soils. They tend to overestimate available soil water on a watershed basis. Sloping land may contain less water because of runoff, particularly if appreciable rain has fallen. In addition, coarse-textured sandy soils have less storage capacity than medium-textured soils and will lose water to deep percolation. On the other hand, fine-textured soils have high storage capacity but lower infiltration rates. They can have higher runoff rates with high intensity rainfall.

The survey results can only be used as an approximation of the soil water on an individual field because of local variability in precipitation, soil texture, plant cover, and topography. In addition, local areas with high or low rainfall may escape detection with the rainfall record-transect sampling system used.

The only way to accurately evaluate local soil water is by checking individual fields.

Harvesting Snow

Precipitation received after freeze-up does not contribute to soil water storage until the spring melt period. Unfortunately, winter winds sweep snow from unprotected clean-tilled fields across all of the Northern Plains. Snow collects leeward of the first downwind barrier and much of it is ultimately lost as runoff.

Standing crop residues can effectively hold snow where it falls or trap drifting snow from adjacent upwind fields. Crop residue height is important because successive storms usually fill the residue with snow. Standing sunflower or corn stalks and small grain stubble are particularly effective, although any standing crop residue performs well.

Where standing residues are left to trap and hold snow where it falls, 1 to 2 inches of overwinter water storage is common. Usually about 50 percent of the water trapped as snow is retained as stored soil water. Maximum water storage from snowmelt occurs when surface soils are dry in the fall. Sublimation, a process where water in snow evaporates directly into the air, and spring melt runoff contribute to winter snowpack water loss.

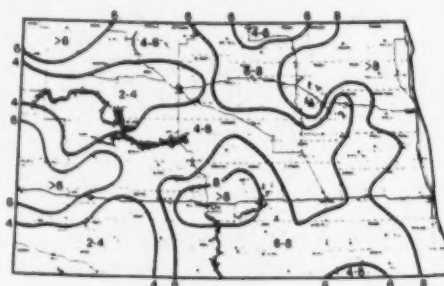
A limited number of North Dakota growers are now using standing crop residues, tall wheat grass barriers, or other snow harvesting methods to move from alternate crop-fallow to recrop farming. An increasing number of growers are using standing crop residues to trap snow to provide insulating cover for winter wheat production.

Historical Perspective

This is the seventh year a fall soil water survey has been conducted. These soil water maps are included to provide perspective for 1988 growing season decisions and other interests.

Drought conditions of 1980-81 prompted the initial survey. The outlook was dismal that first year because the survey showed half of the state had less than 2 inches of stored water. However, it also showed conditions in the northeast were much better than expected. That was the driest of all the surveys conducted.

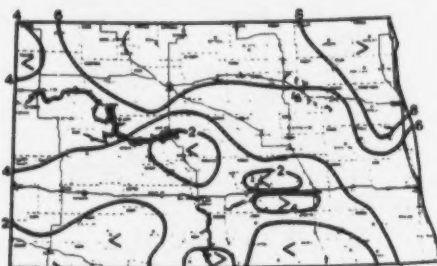
Conditions during the fall of 1982 and 1986 were very wet. Soils over most of the state contained more than 4 in-



Available soil water (inches) November 1, 1986.

chee of available water because of abundant fall precipitation. In 1982 even southwestern North Dakota had plentiful available water.

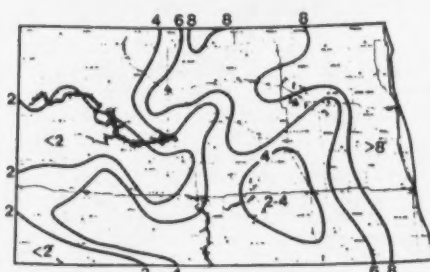
The other years, 1983-1985, showed fairly dry conditions in the western part of the state while the northcentral and northeast were wet. This is considered typical because of normal precipitation patterns and lower temperatures in the north.



Available soil water (inches), November 1, 1985.



Available soil water (inches), November 1, 1984.



Available soil water (inches), November 1, 1983.

Acknowledgements

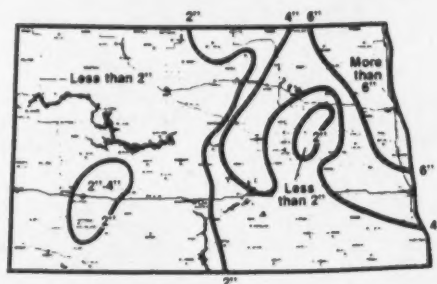
The authors wish to thank Mr. August J. Dornbusch, Jr., Conservationist, members of his staff, and the USDA-Soil Conservation Service for their continued support of this project. The following Soil Scientists were responsible for soil sample collection and have first hand information on local variations in soil water. Their effort and observations are greatly appreciated.

Fred Aziz	McClusky
Lynn DeLauriers	Bottineau
Larry Edland	Oakes
Ernest Jensen	Valley City
Ken Liudahl	Jamestown
Ron Luethe	Devils Lake
Mark Morrison	Carrington
Robert Murphy	Valley City
Jerome Schaar	Crosby
Steve Sieler	Wahpet
Melvin Simmons	Cando
James Strum	Mandan
Willie Terry	Valley City
Ken Thompson	Dickinson
Darrel VanderBusch	Stanley
Hal Weiser	Mandan
P. Michael Whitte	Mandan
M. Robert Wright	Williston

The authors are indebted to the many volunteers who monitor the weather each day. We also wish to thank Mr. Donald E. Stoltz, Meteorologist in Charge, Bismarck National Weather Service Forecast Office for providing current climatic data.



Available soil water (inches), November 1, 1982.



Available soil water (inches), November 1, 1981.



1988 MAR 21 PM 6:00

NDSU EXTENSION SERVICE

Plant Science - Plant Pathology

North Dakota State University, Box 5012, Fargo, ND 58105
(701) 237-6866

March 17, 1988

The Honorable Kent Conrad
The United States Senate
361 Dirksen Senate Office Bldg.
1st and Constitution Ave.
Washington, D.C. 20510

Dear Sir:

This letter is in regard to the upcoming Conservation Hearing that will be held before the Senate Committee on Agriculture, Nutrition and Forestry on March 24, 1988. I would like to submit a statement for the record, a statement that concerns drainage issues within the Food Security Act. As a plant pathologist in the state of North Dakota, my concern is most specifically with the effects of delayed seeding, poor drainage and reduced rotations on crop disease.

Hard red spring wheat and durum wheat crops in North Dakota were subjected to a series of stresses in 1986 and 1987 that combined to result in poor yields and quality in many areas of the state. Diseases were a major stress on all wheat crops in 1986, primarily because of late seeding, abundance of fungal spores, and frequent rains and high humidities that favored infection of leaf and head diseases. In 1986 wheat diseases accounted for an estimated \$120-\$150 million in lost revenue to North Dakota farm producers. In 1987, severe root, leaf and head diseases of wheat occurred primarily in the durum growing areas of the state (Northeast and North Central counties) and an estimated \$75-\$100 million was lost to durum growers. These estimated figures do not contain an unestimated additional loss of tax base for the state of North Dakota. In addition to wheat and other small grain disease losses, high moistures during critical parts of the growing seasons of 1986 and 1987 favored certain row crop diseases such as white mold of dry beans and head molds of sunflowers.

The high level of wheat and other crop diseases that occurred in 1986 and 1987 illustrates the potential threat of diseases to harm yields and quality. Certain management practices will reduce the risk of disease, while others may increase disease risk.

To reduce risk of crop diseases farm producers can manage: date of planting; proper field selection; rotations; residue; varieties; and use of chemical protection. I would like to concentrate on the first four of these management practices, the four that are most affected by current farm programs.

Date of planting. Delayed, reduced or restricted drainage of a field will result in cooler, wetter soils and higher water tables which, in turn, can lead to delayed seeding of a crop and increased risk of certain diseases on poorly drained

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soils. For small grains, a general rule of thumb, based on long-term research, is that for every one day delay in seeding, there is about a 1% yield reduction. One of the reasons for this yield loss is the potential exposure of the crop to increased levels of disease organisms that have multiplied during the growing season, diseases such as leaf rust and tan spot. Another reason is that if the crop is delayed in maturity because of delayed planting, the small grain crop is more likely to flower and mature under warmer temperatures, temperatures which favor head diseases such as scab and glume blotch.

Delayed seeding also can increase the risk of some row crop diseases. If, because of late seeding, the maturity of the row crop is pushed into late fall, this results in increased risk of diseases such as soybean pod and stem blight, corn ear molds (a problem in 1985) and sunflower head molds (severe problem in 1986).

Field selection. Farm producers generally select fields for their high value crops based on several factors, some of which include previous crop and herbicide history, soil texture, soil fertility, and soil moisture. Under certain practices or environmental conditions, soil moisture may not be limiting for a given crop, but instead may be excessive. Inadequately or poorly drained soils increase the risk of many soil-borne crop diseases. All crops, including wheat, are more susceptible to fungal seedling blights and damping off under poor drainage and poor soil aeration. Phytophthora root rot of soybeans is most severe in low, poorly drained, clay soils, and this disease was first confirmed in North Dakota in 1987, in the Red River Valley. The risk of Rhizoctonia and Aphanomyces root rots of sugarbeet and downy mildew of sunflower (caused by a watermold fungus) also are increased by poor drainage conditions. Take-all of wheat and barley is a serious root rot disease that has been more frequently seen in North Dakota in recent years in areas of very high soil moistures. In short, many diseases, generally now seen only in isolated cases, could become more frequent and more long term threats if wet, poorly drained soils become more common.

Crop rotation. Included in field selection decisions are choice of rotational crops. Less drainage and more wet ground could result in reduction of available acreage for rotation crops. Some acreage may become unsuitable for certain crops because they are more highly affected by poor drainage, and thus rotation options will be reduced. Crop rotation has many benefits which include: improved yield; reduced disease and insect problems; changes in the weed spectrum; improved soil fertility and tilth; and a reduction in soil erosion. Improvements in yield through rotation has been demonstrated for many crops. Some examples include the 14 bu/A benefit of growing wheat on last year's soybean ground vs continuous wheat (based on 8 yrs research, Fargo, ND), the 300 lb/A benefit from growing sunflower on previous sugarbeet ground vs continuous sunflower (based on 8 yrs research at Crookston, MN), and the 46 bu/A benefit from growing corn on previous soybean ground vs continuous corn (based on research at Ohio State Univ., 1963).

Much of this yield benefit is due to reduction in disease risk. The disease organisms common to one crop frequently do not infect an unlike crop, and thus rotation reduces the presence of disease organisms. In the Ohio State Univ. study of 1963, corn root rot and corn stalk rot levels were highest in the continuous corn fields where yields were lowest, and levels of these same diseases were lowest in the fields that were on soybean ground and which had the highest yields. In other

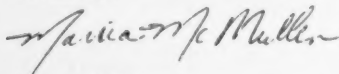
examples, populations of the common root rot fungus that attacks our wheat and barley crops were highest in wheat and barley fields and lowest in oats and rapeseed fields (based on research in Saskatchewan, 1976).

Residue management. Good rotations, when possible, also help to reduce our common foliar diseases, such as tan spot and *Septoria nodorum* that overwinter in North Dakota on wheat stubble. Planting into stubble need not increase disease risk if rotations are practiced; for example if wheat is planted into flax or bean stubble, diseases from the previous crop will not infect the wheat crop. However, when wheat is planted into wheat stubble or residue that is already infected with the tan spot fungus, the level of disease is potentially higher and yield potentials are lower than if the crop was planted either into disease free stubble or if planted into a cultivated field (based on research in North Dakota, 1973; Australia, 1979). Thus, rotation allows better use of residue to protect soil from erosion without increased disease risk. Farm programs that reduce rotation options increase disease risk.

Summary. Restricted or reduced soil drainage increases the risk of certain crop diseases because of the potential for: delayed seeding which increases risk of leaf and head diseases of both small grains and row crops; reduced acreage available for good field selection and proper crop rotation; excessively wet soils could make it unfeasible to grow certain crops very susceptible to root diseases and fewer well drained acres will reduce rotational choices; and fewer crop rotations may result in increased re-cropping on diseased residue.

Thank you for taking an interest in these concerns for our crops and our producers in North Dakota.

Sincerely,



Marcia McMullen
Extension Plant Pathologist

MM/kw

pc: Duane Berglund



Wildlife Management Institute

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LAURENCE R. JAHN
President
LONNIE L. WILLIAMSON
Vice President
RICHARD E. McCABE
Secretary
DANIEL A. POOLE
Board Chairman

March 30, 1988

Honorable Wyche Fowler, Jr., Chairman
Agriculture, Nutrition and Forestry Committee
United States Senate
Washington, D.C. 20510

Dear Chairman Fowler:

The Wildlife Management Institute appreciates the opportunity to submit for the official record this statement on implementation of the conservation provisions of the 1985 Food Security Act.

The Institute, staffed by trained wildlife professionals, has been dedicated to the restoration and improved management of natural resources since 1911.

The Institute supports strongly the conservation provisions of the 1985 Farm Act. Great strides have been made with this legislation to integrate new conservation dimensions into federal food and fiber commodity programs, and to develop sustainable, integrated management of agriculture and natural resources. Our personnel have been involved deeply with planning, implementing and evaluating these precedent-setting conservation provisions.

We are approaching the half-way mark of the 1985 Farm Act, but many of the conservation provisions are still in an early stage of program implementation. Overall, the Institute believes that fine-tuning by Congress is needed in very few cases, and that for the most part changes in the conservation provisions should be considered only after accumulated experience and information demonstrate clearly that modifications are justified.

It is most appropriate, at this time, that Congress begin looking towards the next Farm Bill to develop new ways for linking agriculture and conservation. The following comments are submitted to address many of the concerns and proposals that have been raised recently, and to explore some of these new approaches for integrating conservation features into federal agricultural programs and policies.

Hon. Wyche Fowler, Jr.

-2-

March 30, 1988

SwampbusterValue to Wildlife

Wetlands are being lost at an alarming rate of approximately 450,000 acres per year. About 87 percent of this loss is estimated to be due to agricultural conversion. In crucial areas that have remaining wetlands, swampbuster has the potential of curbing further wetland habitat losses and protecting declining wildlife populations.

One such area is the Prairie Pothole Region of the north-central United States. Often referred to as America's duck factory, this area once probably produced 15 million ducks each year. Although wetland drainage in the Dakotas, Minnesota and Montana has reduced the waterfowl population to less than half of its original level, this critical breeding area still produces the most significant proportion of ducks bred in the lower 48 states.

Annual waterfowl production is directly correlated with the number of potholes scattered across this prairie region. During wet years, it is the smallest (less than 1 acre--Type I) wetlands which become most critical to breeding pairs. These small wetlands are the first ice-free areas available to northward migrating waterfowl, providing food to sustain and maintain fat reserves necessary for successful reproduction. During wet years, Type I wetlands become crucial for breeding pair formation and can provide productive nesting habitat. A scattering of these small areas reduces the threat of disease and predation to waterfowl, and can produce 10 to 15 times more ducks per acre than larger water bodies. The U.S. Fish and Wildlife Service estimates that the loss of these remaining Type I wetlands in the Prairie Pothole Region could reduce waterfowl populations by 20-60 percent.

Wetland Definitions and Swampbuster Exemptions

As defined by the 1985 Food Security Act, a wetland is:

land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

In developing the language which was used in the final version of swampbuster, the House Committee on Merchant Marine and Fisheries recognized that a "soil or substrate that is at least periodically saturated with or covered by water" can produce hydric soil conditions necessary for categorizing the area as a wetland (H.R. Rep. No. 99-271, Part 2, 16:1985). With regards to other wetland criteria requiring the area to support hydrophytic vegetation under "normal circumstances," the House Committee went on to state:

Within the definition of the term wetlands, the term "normal" is intended by the committee to make clear that areas that are saturated by surface or groundwater but have had wetland vegetation destroyed are nevertheless considered wetlands for the purpose of this Act. The term normal is not intended to require any particular frequency or duration of flooding, saturation or ponding.

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Type I wetlands, characterized as being seasonally flooded basins or flats, are fully included in this Congressional definition of wetlands when inundated long enough to produce hydrophytic vegetation and/or hydric soils.

In North Dakota and elsewhere, Type I wetlands, and to a lesser extent Type II-IV wetlands, can sometimes be farmed using normal tillage practices during all or part of years when the wetland basins are dry. This practice is not inhibited by swampbuster regulations and was fully endorsed by the Senate Committee on Agriculture, Nutrition and Forestry during the development of the 1985 Farm Act (Sen. Rep. No. 99-145, Part 1, 304:1985):

The Committee does not intend that a person producing an agricultural commodity on wetlands (basins) be ineligible for participation in certain farm programs, if production is possible as a result of natural conditions and if actions of the producer do not destroy the wetland characteristics. Examples of this natural condition include areas of the prairie pothole region where production of an agricultural commodity in such potholes is feasible and practicable during dry years, without destroying the wetland characteristics. During the wetter years, these potholes will exhibit true wetland characteristics and will again provide wetland functions.

Under these guidelines, neither were agricultural producers denied the right to continue conventional farming practices on these areas, nor were they given liberal policy to drain and destroy the wetland characteristics of the basins if they could be cropped under a sequence of drought years. Cropping history should not be used as an overriding factor to determine if land previously cultivated is a "converted wetland" and therefore exempt from swampbuster restrictions.

The inclusion of Type I wetlands, such as playas, potholes or other seasonally flooded areas, in wetland definitions is repeatedly documented in Congressional Committee reports, throughout the language of the Food Security Act, and in regulatory rulings of the USDA. The ecological importance of these areas to waterfowl and other wetland species, as recharge areas for groundwater aquifers, and for controlling destructive seasonal floods further justifies their inclusion in swampbuster definitions and regulations. No additional exemptions beyond those found in the September 17, 1987 federal regulation should be allowed for Type I wetlands or other wetland basins that may have been cropped when dry.

Compensating Wetland Protection/Enhancement

Agricultural producers who have not converted wetlands or who have converted wetlands that could possibly be restored should receive some form of financial compensation as encouragement for enhancing wetland values.

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The Conservation Reserve Program could be expanded to compensate farmers for restoring and enhancing wetlands, as well as highly erodible lands. Eligibility should be based on wetland determinations made by the Soil Conservation Service in close consultation with the U.S. Fish and Wildlife Service and state wildlife agency. Enrollment must be limited to prior converted wetlands (drainage commenced prior to December 23, 1985) and wetlands that have been annually planted in an agricultural commodity. A portion of the adjacent upland areas surrounding delineated wetland basins must be similarly bid in at the same rate to maintain the integrity of the entire wetland basin. These adjacent uplands also are necessary to provide nesting cover for wildlife and to "block out" areas for farming and tillage convenience. Converted wetlands enrolled in CRP must be restored according to Soil Conservation Service specifications developed in close consultation with the U.S. Fish and Wildlife Service and state wildlife agency, and restoration should be cost shared as an approved conservation practice.

Participation in the CRP by North Dakota farmers has already been high, with around 8,000 producers enrolling nearly 1.5 million acres, or about half of their eligible land, into the Reserve. In 1988, North Dakota farmers will receive more than \$55 million in annual CRP rental payments averaging approximately \$38 per acre.

Existing wetlands without established cropping histories that do not qualify for CRP, may be enrolled in the current Water Bank Program (WBP) or the U.S. Fish and Wildlife Service's acquisition program. Under the WBP, 10-year agreements are entered into with landowners and operators in important migratory waterfowl nesting, breeding or feeding areas for the conservation of specified wetlands. Wetlands and adjacent upland areas in 10 states are eligible for WBP.

Since 1977, North Dakota farmers have enrolled nearly 190,000 acres in the WBP and received more than \$3 million in annual rental payments that average nearly \$17 per acre. In addition, the U.S. Fish and Wildlife Service also maintains easement agreements with landowners on approximately 770,000 acres in North Dakota.

Administration and Enforcement of Swampbuster

Several concerns and misunderstandings have been voiced by farm groups, conservation organizations, state and federal agencies, and others regarding the administration of swampbuster provisions and enforcement of swampbuster violations/penalties.

County ASCS committees, made up of local farmers, have the responsibility of determining and enforcing swampbuster violations. ASCS committees have been embarrassingly complacent at investigating potential swampbuster violations. The U.S. Fish and Wildlife Service has reported 200-250 "suspected" violations of the law to county ASCS officials in North and South Dakota, and 100 in Minnesota. Reportedly, local ASCS officials to date have adequately investigated few, if any, of these possible violations.

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ASCS must develop greater administrative effectiveness in administering and enforcing swampbuster provisions. This must occur at the ASCS County Executive Director or State Administrator level. ASCS in cooperation with SCS and FWS should begin 10-15 percent spot checking for compliance with swampbuster, as is done with other programs.

Other agricultural-related interests have suggested that farmers not be denied program benefits until final confirmation of potential swampbuster violation. Present USDA policy is to withhold benefits whenever any potential program violation (not just swampbuster) occurs. Given reports that only two agricultural producers have been denied farm program benefits in the entire U.S., these concerns seem premature.

Agricultural producers who inadvertently convert a wetland should be allowed to restore that wetland at their own expense and in a reasonable time period. Examples of this proposal would be allowing a producer to plug a converted wetland drain or level a ditch to SCS/FWS specifications. Program crops must not be produced on the wetland before approved restoration is completed. Routine mitigation of any conversion through the creation of new wetlands should not be allowed. Prudent application of this proposal could occur without any major revision of federal regulations.

By law, if program crops are produced on any wetland converted after December 23, 1985, the agricultural producer must forfeit all federal farm program benefits for years when commodity crops are grown on the converted wetlands. Under existing law, farmers need only to plant the drained areas to a grass or other permanent seeding to avoid further penalties. In sharp contrast, the ecological value of a wetland, once it is drained, may be lost forever.

Discounting the penalty to "make the punishment fit the crime" has been suggested by several farm groups. Under this scenario, only a portion of a farmer's total program benefits would be denied for "minor" violations. Penalties could be reduced to a point where they barely cover the value of the crop produced on the altered wetland. Because critical wetland habitats are typically such a small fraction of the entire farm acreage, swampbuster penalties for drainage and conversion could become so diluted as to be ineffective deterrents. Swampbuster penalties must be applied to the fullest extent required to successfully discourage future wetland drainage and conversion.

It is perfectly reasonable to expect some tension and difference in view on implementing swampbuster regulations. But these precedent-setting provisions are needed to meet U.S. responsibilities under Migratory Bird Treaties and to advance sound resource use, and should not be changed without justifiable cause. Overall, the Institute supports the final rules for swampbuster issued by USDA on September 17, 1987 and believes it would be best to hold the much needed provisions intact at this early stage of program implementation. Fine-tuning by Congress should be considered only after accumulated experience and information demonstrate clearly that changes are justified. What is needed is the administrative initiative from USDA agencies to implement the regulations fully, fairly and in a timely fashion.

Sodbuster and Conservation Compliance

Conservation compliance embraces about 120 million acres of highly erodible croplands and sodbuster discourages millions more from being brought into production without adequate protection from soil erosion. In its final regulations for sodbuster and conservation compliance, USDA dropped all reference to "T" (soil loss tolerance levels) for erosion reduction. In its place, erosion reduction will be evaluated according to cropping system criteria set forth in local Soil Conservation Service field office technical guides (FOTG). Alternative conservation systems have been offered in the rules for highly erodible croplands which were in production prior to December 23, 1985 and where "economic and technical feasibility" preclude strict application of FOTG guidelines. Based on the Institute's understanding of USDA's final rules for highly erodible land and wetland conservation, liberal alternative cropping systems will not be allowed for bringing new land (sodbusting) or CRP land into production.

The Institute urges Congress to closely monitor implementation of sodbuster and conservation compliance provisions. We believe that with adequate resources, USDA can meet timetables for compliance established in the Farm Act and we foresee no reason for altering either the 1990 planning or 1995 implementation deadlines.

Conservation Reserve Program

The Conservation Reserve Program is one of the most successful provisions of the 1985 Food Security Act. Twenty-three million acres have entered the CRP in the first five sign ups and another 4.0-4.5 million acres are expected to be added as a result of the sixth sign up. Approximately 470 million tons of soil are being saved annually on acreage already signed up in the CRP. The yearly erosion rate of land currently in the CRP will be reduced from an average of 22 tons per acre to 1.7 tons per acre. Overall, CRP will be a substantial boon to wildlife. Early computer models predict a conservative 2 to 3-fold increase in pheasant populations in Minnesota, and dramatic increases in songbird and other wildlife populations. The CRP will continue to provide tremendous benefits to wildlife nationwide if substantial acreages are established and maintained in thrifty native grasses, legumes, woody shrubs or other wildlife cover types.

Re-establishing CCC Funding

In FY 1988, the funding mechanism for the CRP was changed from Commodity Credit Corporation reimbursement to annual appropriation. This change in funding mechanisms may introduce uncertainty about continued funding for future enrollments that may compromise farmer confidence in the CRP and other conservation provisions. The Institute recommends re-establishing Commodity Credit Corporation funding for continuing implementation of the Conservation Reserve Program.

County Waivers

The existing county cap of 25 percent of acres eligible for Conservation Reserve Program should be revised. In addition to current authority of the Secretary of Agriculture to grant a waiver to permit additional acreage to

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be entered in CRP above 25 percent, the Governor and/or County Board should be permitted to request such waivers. The Secretary should be authorized to approve such requests, since highly erodible acreages and some other acreages need vegetative cover, as required under CRP. Greater flexibility in administering and granting waivers is needed to minimize soil erosion and resolve nonpoint source water quality problems.

Tree Planting

In establishing the Conservation Reserve Program, Congress mandated a goal of establishing and maintaining not less than one-eighth (12.5 percent) of land enrolled in CRP in trees. A change in CRP criteria for tree planting from 3T to 2T with 1/3 rather than 2/3 of a field containing highly erodible soils, increased tree planting bids by 536,000 acres during the sixth sign-up, bringing total tree planting acreages in CRP to nearly 1.8 million acres.

Enrollment of tree planting acreages in the CRP has been by and large occurring exclusively in the South. Several recommendations have surfaced to encourage tree planting in other regions and to make the practice more responsive to other conservation needs, especially wildlife.

The Institute recommends that USDA include windbreaks, shelterbelts and woody plantings for wildlife as tree acreages and allow these practices to be enrolled under the 2T and 1/3 HEL criteria. These cover types more closely match the tree planting opportunities available in the Midwest and Great Plains, and are more in line with wildlife needs in these regions. Because of the semi-arid condition of some croplands west of the 100th meridian, supplemental moisture may be necessary to establish woody vegetation in this region. Where necessary, cost-sharing for drip irrigation should be available to ensure seedling survival.

To further encourage the establishment of hardwoods and the planting of trees in the Midwest, Congress should consider increasing federal cost shares for these practices to 65 or 75 percent--a level more consistent with traditional cost-share levels offered in the Forestry Incentive Program (FIP). Increasing federal cost-share levels are justified for establishing expensive practices such as windbreaks which cost approximately 5 times that of establishing tame grasses. Congress also should consider providing cost-share monies for more than one year for these practices to reflect the longer period of time required to establish hardwoods and to ensure their survival.

CRP Expansion

Several bills now before the committee (S. 1521, S. 2045, S. 2143) seek to expand lands eligible for the CRP and/or increase CRP enrollment beyond its current 45 million acre cap.

Research indicates that such expansion of the CRP is possible without significantly compromising the Nation's food and fiber needs. The USDA's 1987 Second RCA Appraisal projects that domestic and export demands for agricultural products could be met on 213 million acres of croplands by the year 2000. This projection suggests that 100 million acres of marginal croplands, or about one-

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third of all croplands now in commodity production, could be retired in long-term set-asides. Furthermore, economic analyses estimate additional federal budget savings of about \$380 million are possible above the present net CRP savings of \$3.3 billion if this program were expanded to 65 million or more acres.

According to the 1982 National Resources Inventory, new lands potentially eligible under expanded criteria could include: (1) 101 million acres of highly erodible croplands of which about 50 million are so highly erodible that they virtually cannot be adequately protected without permanent retirement; (2) at least 20-30 million acres of cropland that have limited potential for agricultural production because of seasonally high water tables, overflow or poor soil drainage; (3) another 4 million acres of croplands that are inundated long enough to be classified as Type I and II wetlands by the U.S. Fish and Wildlife Service; and (4) several million acres of other croplands with potential groundwater, surface water or other environmental or erosion problems.

The Institute supports future expansion of the CRP to further reduce soil erosion, improve water quality, enhance fish and wildlife resources and place agriculture on a more sustainable basis. Such an expansion also is justified to meet agency responsibilities for reducing nonpoint source pollution under the 1986 Clean Water Act and other conservation mandates.

Continuing the CRP Legacy

Congress should begin considering mechanisms to extend conservation benefits on CRP lands beyond their 10-year contract by making permanent the conversion of cropland to protective vegetative cover on highly erodible lands. In many cases, the total CRP payments over the 10 years of the program will approximate, if not exceed, the current value of the land. For a small additional payment to the landowner, conservation benefits could be continued in perpetuity by retiring base acreages permanently or through deed restrictions. Such arrangements could be negotiated up front during future CRP enrollments by offering bonus payments for permanent base retirement or in the final year of the CRP contract period.

Multiyear Acreage Set-asides

About 40-55 million acres in agricultural commodities have been idled during recent years through annual acreage reduction programs and paid diversions. Because of adjustments or modifications made to annual set-aside programs, farmers lack reasonable planning horizons for properly managing annual set-aside acreages and consequently are reluctant to invest in long-term vegetative cover practices. In fact, past studies in the Midwest and Great Plains have revealed that up to 60 percent of the annual set-aside acreage is fallowed or left unseeded, exposed to wind and water erosion. To enhance conservation features on this set-aside acreage, protective vegetative cover should be established and be left undisturbed for 3 or more years (see attachment).

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Section 1010 of the 1985 Food Security Act gives the Secretary of Agriculture the discretionary authority to enter into multiyear set-aside contracts with producers participating in federal commodity programs for wheat, feed grains, upland cotton and rice. Despite the pressing conservation need to establish protective vegetation cover on set-aside acreages, the Secretary has failed to implement multiyear set-aside contracts.

Several bills now before the committee (H.R. 2752, S. 2106, S. 2045) address the need to convert annual acreage set-asides to multiyear contracts. In the absence of an administrative initiative to make this important conversion, the Institute fully supports Congressional action to: (1) require the Secretary of Agriculture to allow and promote multiyear set-aside contracts in commodity programs; (2) protect base acreages for 3 years on multiyear set-aside acreages as an incentive for producers to participate; and (3) provide federal cost-share monies for the establishment of protective vegetation cover on multiyear set-aside acreages.

Conservation Easements

The Farmers Home Administration (FmHA) was given two rather unique assignments under the conservation provisions of the 1985 Food Security Act. Both of these mandates were designed to assist financially troubled or failed farmers through the application of 50 year or longer conservation easements on acres least productive or inappropriate for agriculture. Section 1314 inventory easements protect wetlands, critical fish and wildlife habitat, and other conservation features through deed restrictions placed on foreclosed inventory lands held by FmHA. Through easements, FmHA will in some circumstances assist the next purchaser of the farm by reducing the lands cost during resale.

Section 1318 debt easements assist financially troubled farmers by allowing them to restructure their FmHA loan and cancel a portion of their debt in exchange for similar conservation easements. Federal or state fish and wildlife agencies in most cases serve as easement managers. New FmHA authority under the 1987 Agricultural Credit Act also now allows fee title transfer of FmHA inventory property to fish and wildlife agencies when an entire farm is of marginal value to agriculture, but has important fish and wildlife features.

FmHA has recently released recommended legal language and national guidelines clarifying agency policies and responsibilities for developing conservation easements on part of its 1.7 million acres of foreclosed property held in inventory. This new step should greatly facilitate field level conservation efforts to implement inventory easements. Federal regulations to implement important Section 1318 debt easements have not yet been released by FmHA after over two years of waiting. Opportunities to maintain and restore critical fish and wildlife habitats through conservation easements exist and await administrative action.

Congress may wish to consider expanding FmHA authorities even further to address agency responsibilities under Executive Order 11990 (Protection of Wetlands), the North American Waterfowl Management Plan and other conservation directives. Rather than waiting until wetlands are destroyed or marginal farmlands are foreclosed, why couldn't FmHA consider developing conservation easements on lands before loaning money? In this way, it seems reasonable that FmHA could reduce a new farmer's debt load, better protect its investment, and ensure that existing wetlands will not be destroyed.

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Final Views

A longstanding procedure in agricultural policy needing change is the use of "base acreage" for individual commodities--such as corn, wheat, etc.--to determine how many taxpayer dollars a landowner will be paid each year. As one Nebraska farmer stated recently, his "base acreage" is his ticket to the federal treasury.

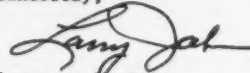
The official record of crop acreage on a farm in past years is used to qualify a landowner for benefits such as target prices, low-interest loans, and deficiency payments. In essence, government payments substitute for free-market financial incentives and encourage production of crops, even in an era of commodity surpluses. Instead of the market encouraging or discouraging crop production, ensured taxpayer-funded government payments continuously bring land into crop production and maximize yields per acre. These actions push trends in the wrong direction and contribute to mounting surpluses that must be stored at additional expense.

The base acreage/target price/deficiency payment/storage payment system encourages grassroots decisions that move uses of land away from, rather than toward, an integrated commodity/conservation agricultural program. That system should be realigned to reduce program costs and place agricultural land use on a sustainable basis.

Attention must focus on these existing and other proposed policies and procedures to avoid having new laws attack the multitude of farm issues separately. Price-support provisions should not stimulate abuse of soil, water and wildlife resources, as has been the situation in a number of instances in past years. Rather, integrated commodity/conservation provisions should advance sound husbandry of the resource base.

We appreciate very much the opportunity to present these views and recommendations for the official record of this important hearing.

Sincerely,

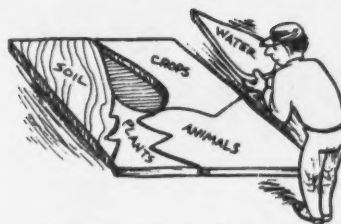
Laurence R. Jahn
President

Attachment

LRJ:dt

Linking Agriculture and Resource Conservation Programs

• Putting it all together •



MULTIYEAR ACREAGE SET-ASIDE: A PRESSING NEED

Current USDA farm commodity programs and set-aside requirements are subject to annual change or modification. Due to the unpredictable nature of these programs, farmers lack reasonable planning horizons necessary for properly managing set-aside acreages and often are reluctant to invest in long-term vegetative cover practices. In 1987, 54.4 million acres (23%) of all commodity base croplands were idled under annual set-aside and diversion programs (see Tables 1 and 2). Research has indicated that the vast majority of annual set-aside lands do not have adequate vegetative cover to prevent soil erosion, protect water quality, enhance fish and wildlife resources, or improve the structure and quality of the land.

RECOMMENDATION: Establish protective vegetative cover on set-aside acreages by converting to multiyear (3+ yrs.) contracts with adequate incentives to encourage enrollment by farmers.

BENEFITS: Soil. Studies show that up to 60 percent of annual set-aside lands are left unseeded or summer fallowed (tilled). As few as 6 percent had adequate protective cover (i.e., grasses and/or legumes) necessary for preventing soil erosion. Establishment of multiyear vegetative cover can reduce soil erosion rates from 20-30 tons per acre per year to 2 T/ac/yr. Grasses and legumes also build and improve overall soil fertility, tilth and conditions for soil organisms.

Water Quality. Without multiyear vegetative cover, annual set-aside acreages have a high potential of contributing to surface and groundwater contamination. Research indicates that on unseeded and/or fallow lands excessive nitrate leaching into groundwater can occur at a rate two times that of acceptable drinking water standards. Establishment of multiyear vegetative cover can help reduce substantially human health risks associated with hazardous pesticides, nutrients and other materials on set-aside lands.

Fish. Suspended solids, silt and chemicals from annual set-aside lands degrade stream habitats and have the potential of severely limiting fish communities. Multiyear vegetative cover that controls soil erosion also would help reduce stream turbidity, improve dissolved oxygen levels, and enhance aquatic spawning and rearing habitats for fishes and their food organisms.

(more)

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Wildlife. Studies have indicated that nesting cover--the most important factor limiting ground-nesting wildlife--is absent, poor or only in fair condition on 80 percent of annual set-aside lands. Wildlife populations have the potential to respond remarkably to protective cover on multiyear set-asides. For instance, a computer model for Minnesota predicts that if annual set-aside lands were converted to multiyear vegetative cover with mowing restrictions, ring-necked pheasant populations in the state would increase from 1 million to 7 million over the next 5 to 10 years.

Economic. During the 1987 crop year, the federal government paid agricultural producers participating in annual set-aside programs \$14.1 billion in farm program payments that yielded few conservation benefits. By converting annual set-aside programs to multiyear acreage set-asides with protective vegetative cover, substantial public benefits would be obtained through reduced soil erosion, improved water quality, enhanced wildlife populations, enriched lands, expanded recreational opportunities, and improved economic returns for landowners. In addition to these conservation and economic benefits, multiyear acreage set-asides also would reduce USDA administrative costs, compared with a series of one-year contracts.

Although no specific figures are immediately available to single out direct economic benefits of multiyear acreage set-asides, USDA reported in The Second RCA Appraisal: Analysis of Condition and Trends (1987) that nationwide:

- Up to \$17 million in annual savings are possible by reducing rates of erosion that result in loss of soil productivity.
- Additional annual savings of between \$3.2 billion and \$13 billion could be obtained by reducing offsite damages associated with water erosion and run-off from agricultural land.
- Increasing water quality by reducing chemical and sediment-associated contaminants can save up to \$126 million every year in treatment costs.
- Reducing sediment damages to water storage facilities, conveyance areas, and transportation systems can save up to \$2.4 billion annually.
- Economic value of commercial and recreational fisheries could be increased by as much as 40 percent by improving water quality and controlling erosion.
- Hundreds of millions of dollars of economic activity could be generated from wildlife-associated recreation. For example, pheasant hunters increased 250 percent and contributed \$60 million annually to South Dakota during the Soil Bank program in the 1950-1960s.

Multiple-year acreage set-asides would help capture a significant part of these and other benefits.

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Table 1. Summary of Set-aside and Paid Diversion Acreages by Commodity Crop, 1961-1987
(in millions of acres).

Year	Corn	Sorghum	Barley	Oats	Total Feed Grains	Wheat	Cotton	Rice	Total ACR*
1961	19.1	6.1	--	--	25.2	--	--	--	25.2
1962	20.3	5.5	2.4	--	28.2	10.7	--	--	38.9
1963	17.2	4.6	2.7	--	24.5	7.2	--	--	31.7
1964	22.2	6.5	3.7	--	32.4	5.1	0.5	--	38.0
1965	24.0	7.0	3.7	0.1	34.8	7.2	1.0	--	43.0
1966	23.7	7.3	3.7	--	34.7	8.3	4.6	--	47.6
1967	16.2	4.1	--	--	20.3	--	4.8	--	25.1
1968	25.4	7.0	--	--	32.4	--	3.3	--	35.7
1969	27.2	7.5	4.4	--	39.1	11.1	--	--	50.2
1970	26.1	7.4	3.9	--	37.4	15.7	--	--	53.1
1971	14.1	4.1	--	--	18.2	13.5	2.1	--	33.8
1972	24.4	7.3	4.9	--	36.6	20.1	2.0	--	58.7
1973	6.0	2.0	1.4	--	9.4	7.4	--	--	16.8
1974	--	--	--	--	0.0	--	--	--	0.0
1975	--	--	--	--	0.0	--	--	--	0.0
1976	--	--	--	--	0.0	--	--	--	0.0
1977	--	--	--	--	0.0	--	--	--	0.0
1978	6.1	1.4	0.8	--	8.3	9.6	0.3	--	18.2
1979	2.9	1.2	0.7	--	4.8	8.2	--	--	13.0
1980	--	--	--	--	0.0	--	--	--	0.0
1981	--	--	--	--	0.0	--	--	--	0.0
1982	2.1	0.7	0.4	0.1	3.3	5.8	1.6	0.4	11.1
1983	32.2	5.7	1.1	0.3	39.3	30.0	6.8	1.8	78.0
1984	3.9	0.6	0.5	0.1	5.1	18.6	2.5	0.8	26.9
1985	5.4	0.9	0.7	0.1	7.1	18.8	3.6	1.2	30.7
1986	14.0	2.8	1.8	0.7	19.3	20.9	3.6	1.4	45.2
1987	21.5	4.1	2.6	1.0	29.2	20.5	3.3	1.4	54.4

*ACR = Acreage Conservation Reserve.

Table 2. Summary of 1987 Set-aside and Paid Diversion Acreages by Commodity Crop.

State	Corn	Sorghum	Barley	Oats	Feed Grains Total	Wheat	Rice	Upland & ELS Cotton ^a	Total ACR ^a
Alabama	97,964	29,039	160	4,064	131,227	69,871	0	107,157	308,253
Alaska	0	0	704	43	731	20	0	0	771
Arizona	7,633	2,702	4,049	1,503	16,777	19,243	0	119,087	155,957
Arkansas	13,714	141,360	17	3,424	158,515	378,231	557,670	170,436	1,262,422
California	59,707	5,202	78,245	7,293	148,447	187,508	204,394	232,179	792,530
Colorado	204,738	83,880	58,733	5,640	357,931	185,561	0	0	1,142,992
Connecticut	4,743	0	0	0	4,743	0	0	0	4,743
Delaware	31,705	18	3,864	18	35,605	4,815	0	0	40,228
Florida	54,583	9,612	0	5,450	69,655	18,504	3,593	6,647	98,401
Georgia	331,634	38,987	4,250	15,907	390,778	237,810	0	73,027	701,615
Idaho	16,707	55	226,227	6,869	249,858	425,714	0	0	675,572
Illinois	3,193,404	63,135	228	1,193	3,261,960	295,432	0	0	3,557,982
Indiana	1,705,598	3,831	195	1,470	1,711,094	356,473	0	0	1,867,569
Iowa	4,137,499	3,478	188	7,278	4,148,443	7,993	0	0	4,156,436
Kansas	377,907	1,238,542	44,028	23,079	1,684,236	3,424,925	0	175	5,109,336
Kentucky	372,358	19,334	3,769	303	395,764	92,447	0	0	488,231
Louisiana	23,683	58,173	0	773	82,629	55,928	249,136	199,368	587,061
Maine	5,321	0	79	3,737	11,137	47	0	0	11,184
Maryland	120,529	311	6,010	362	127,112	17,556	0	0	144,464
Massachusetts	2,204	3	0	5	2,212	0	0	0	2,212
Michigan	715,178	308	7,253	21,257	753,998	123,184	0	0	877,184
Minnesota	2,072,764	361	232,919	91,480	2,397,024	931,919	0	0	3,328,943
Mississippi	25,734	70,061	0	484	96,279	130,838	133,914	340,744	691,777
Missouri	638,662	288,257	1,481	2,637	931,037	349,868	37,383	60,372	1,378,880
Montana	14,454	63	538,093	35,861	608,471	1,742,388	0	0	2,351,059
Nebraska	2,122,833	558,724	18,043	24,245	2,723,847	761,495	0	0	3,485,342
Nevada	125	80	3,692	581	4,478	6,178	0	0	10,854
New Hampshire	1,583	1	0	0	1,584	0	0	0	1,584
New Jersey	28,492	213	2,139	240	31,084	4,607	0	0	35,691
New Mexico	24,834	69,685	8,025	844	103,390	134,740	0	27,432	265,563
New York	219,493	32	3,664	16,745	239,938	32,760	0	0	272,698
North Carolina	425,166	12,929	7,875	4,874	450,844	100,407	0	24,876	576,327
North Dakota	290,834	1,753	746,478	227,920	1,266,985	3,467,055	0	0	4,734,040
Ohio	996,686	426	182	6,683	1,003,977	224,748	0	0	1,228,725
Oklahoma	17,817	134,995	4,498	10,450	167,955	1,920,888	707	146,153	2,235,703
Oregon	11,164	305	50,309	8,532	70,312	307,434	0	0	377,946
Pennsylvania	154,653	683	2,162	8,117	165,615	14,649	0	0	180,764
Rhode Island	41	0	0	0	41	0	0	0	41
South Carolina	175,982	6,665	3,717	7,899	192,263	105,820	0	36,776	334,859
South Dakota	1,049,697	123,845	195,294	316,874	1,687,710	1,278,902	0	0	2,966,612
Tennessee	159,706	51,144	1,167	610	212,627	117,685	95	103,003	433,410
Texas	426,056	1,121,742	12,167	46,617	1,616,582	1,635,739	207,348	1,664,597	5,119,466
Utah	8,993	53	23,399	1,608	34,053	54,272	0	0	88,325
Vermont	4,767	6	90	84	4,947	50	0	0	4,997
Virginia	160,017	3,374	17,379	1,131	181,901	50,093	0	408	232,402
Washington	34,620	29	203,847	2,310	240,806	786,991	0	0	1,007,797
West Virginia	17,552	59	257	212	18,080	941	0	0	19,021
Wisconsin	895,673	335	6,594	22,029	924,631	23,049	0	0	947,680
Wyoming	24,758	58	10,618	2,929	28,363	80,049	0	0	108,480
TOTAL	21,481,616	4,149,848	2,550,934	964,458	29,146,856	20,543,011	1,378,846	3,333,727	54,402,440

^aELS = Extra Long Staple; ACR = Acreage Conservation Reserve.



**NATIONAL
FARMERS
UNION**

**STATEMENT OF

THE

NATIONAL FARMERS UNION**

**Submitted for the March 24, 1988 hearing record
of the
Subcommittee on Conservation & Forestry,
Senate Committee on Agriculture, Nutrition, & Forestry**

Delegates to the 86th annual National Farmers Union convention last month carefully developed policy positions on a range of environmental issues. Their goal was to ensure the health and safety of farm families and rural neighbors, while allowing environmentally responsible farm operations to continue without overburdening regulation. The 1988 policy statement sections pertaining to conservation concerns, particularly the provisions of the 1985 Food Security Act (FSA), are included with this statement as Attachment A.

From the outset, one must recognize that any conservation program's effectiveness depends on providing quick, accurate information and technical assistance to farmers. These services in turn depend on adequate funding and staffing for the Soil Conservation Service (SCS) and other agencies with direct farmer contact. Several well-intentioned conservation measures already in place hold drastic consequences for thousands of farmers if SCS is left unable to meet its workload in the time allotted.

One must also bear in mind that many conservation measures can be quite costly to implement. Terracing, tiling, and a host of other best management practices require considerable investment. At a time when many producers are not recovering their costs of production, additional outlays can be prohibitive. Congress has clearly decided that soil and water conservation are in the general public interest. It is reasonable to expect the public to share in the cost of preserving our soil and water resources, as has been done with the ACP and Conservation Reserve (CRP) programs. Without going into lengthy histories of land abuse by corporate owners who have taken over farms and quickly undone years of sound conservation practices, we would simply suggest that our Nation's resources are best protected when government acts as a partner with those who live on and work with the land.

That partnership was surely the intent of Congress in adding the sodbuster and swampbuster provisions to the FSA. Farmers were given an ultimatum -- plow up fragile land or convert wetland to production after December 23, 1985 and lose the benefits of federal farm programs. But farmers who were willing to act responsibly in the management of soil and water resources were promised the cooperation of government -- in this case, SCS -- in developing a sensible conservation plan.

Somehow, the partnership went awry. Normal farming practices traditionally recognized as conservation measures fell into the definitions of sodbuster and swampbuster. It took a subsequent regulation (following threats of new legislation) to remove the normal conservation practice of crop rotation between corn and alfalfa from the definition of sodbusting (52 FR 35194). Swampbusting definitions are so broad that the entire Red River Valley comes under the definition of a wetland. Farmers must ask

for SCS assistance by filling out a form that amounts to an admission of guilt. While understaffed SCS offices need to prioritize their caseloads, such a procedure makes government an adversary rather than a partner.

Similar problems exist in the conservation compliance portions of the FSA. It is farmers who will lose if SCS is unable to complete its review of existing plans and development of new plans by 1990. Congress should look closely at the progress made to date, and whether traditional SCS services have been abandoned to devote all resources to the FSA tasks. We believe there is a need either to set more realistic deadlines, such as 1992, or to increase SCS funding to allow for more staff or independent contractors to get the important work of the FSA completed.

The Conservation Reserve Program (CRP) has been a major success of the FSA. It is one of the best examples of the progress that can be made in conservation when farmers and government work together. Yet, we have several concerns regarding CRP. First, we believe more effort should be made to solicit CRP bids from areas with highly erodible land and wetlands which have not shown strong participation to date. Second, hearings should be held in areas which have shown maximum participation to learn the effects of high CRP enrollment on the local economy. Third, while we understand federal budget pressures, we believe that CRP payments should be made in cash, rather than commodity certificates. In establishing the CRP, Congress clearly intended that payments should be made in cash if in-kind payments, "would have a depressing market effect." (1985 Food Security Act, statement of managers, Title XII Resource Conservation, Item 23.)

As the groundwork is laid for the 1990 farm bill, attention should be given to expanding CRP eligibility to include other types of environmentally sensitive land, for which the public interest is best served by taking the land out of production. We support expansion of CRP to take in wetlands currently eligible for the Water Bank Program, and land which should not be cropped due to a high potential for pesticide leaching.

We must also begin the discussion of what is to become of land enrolled in the CRP after the ten year contract expires. Conservation compliance will prevent the land from being eligible for other farm programs. We would encourage legislation to continue responsible conservation measures, such as long-term easements in exchange for planting hardwood trees.

Finally, the 1990 farm bill is the next major opportunity to craft a farm policy that does not make overproduction an economic necessity. It is possible to have federal farm programs that don't set aside some acreage for future needs and then base payments according to how much can be wrung from the remaining acres. It is possible to have farm programs that don't enslave

farmers to an endless chain of fertilizers and pesticides. It is possible to have a food policy in the United States that allows farmers to recover their costs of production without sacrificing a safe and reasonably priced food supply.

The National Farmers Union looks forward to working with the Subcommittee on Conservation and Forestry on these issues.

ATTACHMENT A

ARTICLE V
LAND AND THE FAMILY FARM

A. Objectives of a Comprehensive Land Policy

A new national land and food policy, oriented to family agriculture, is needed. We must maintain family agriculture, a viable rural America, and the capacity to produce abundant food and fiber. We must assure conservation of our land, water, and air.

Millions of acres of high-quality farmland are being diverted to non-farm uses each year. Despite the fact that in oversupply situations the temporary removal of farmland from production may be necessary, irreplaceable farmland must be preserved for food and fiber production.

The nation's resources are protected best by families who own and control their land.

B. Corporation, Real Estate Trusts, and Alien Ownership of Agricultural Lands

The Farmers Union urges passage of state and federal laws to prohibit entry into the business of farming or ownership of agricultural lands by non-farm interests.

Alien interests (except families or individuals seeking United States citizenship) should be prohibited from acquiring agricultural lands.

We respect the right of other nations to put similar limitations on foreign interests to own agricultural lands in their nations.

Anti-corporation farming laws at the state level should be strengthened and strictly enforced. We view favorably state programs of graduated land taxes and similar disincentives or

limitations to discourage the concentration of land ownership and off-farm ownership.

C. Land Transfer

We call for a "Beginning or Limited Resource Farmer Assistance Program" which would provide federal guarantees for loans, leases, and sales of land to individuals who are qualified to enter farming but who do not have or cannot acquire the financial assets to do so.

We urge a joint federal-state cooperative effort to assist beginning and limited resource farmers to acquire an economically viable family farm enterprise.

Special income tax incentives should be provided to landowners and retiring farmers who sell farmland to beginning or limited resource farmers. In developing any such tax credit programs, Congress should target benefits to landowners willing to sell their land at a price based on its productive capability. Such a program should be promoted to provide for the orderly transfer of land prior to the seller's death and should be complementary to estate planning and estate and gift tax policies.

Religious, educational, charitable, and similar non-profit institutions who hold farmland as an investment should divest themselves of such lands and insure that such lands are sold in a manner which preserves and promotes family farm units.

When land is transferred, existing effective conservation practices must be maintained.

D. Public Lands

We believe that public lands must remain open to fulfill the multiple-use concept. Public lands are an annually renewable resource harvested by range sheep and cattle operations.

We believe wilderness designations should be held to minimum because of the adverse impact they have on livestock grazing, mining, timber, and water resource development.

We recommend that Congress maintain its commitment to multiple-use of public lands by continuing the current grazing fee formula enacted in 1978 which allows stockmen to utilize the renewable rangeland resource. Farmers Union believes the current formula reflects fair market value of the permit through indices and equitably compensates the federal government for use of the public lands.

To maintain viable ranching operations, stockmen must be allowed to travel by motorized vehicle, control predatory animal

populations, continue range improvements, and develop water resources.

Any wilderness bill must have release language that will prevent an ongoing study evaluation that can lock up lands from multiple-use without proper Congressional action.

Any public lands involved in the Wilderness Inventory Process not so designated by Congress should be managed as multiple-use lands.

E. Grasshopper Control

Due to severe infestations of grasshoppers, Farmers Union recommends that adequate funds be made available to Animal and Plant Health Inspection Services (APHIS) to monitor hatch and damage and to coordinate control measures in those affected states. Major infestations of grasshoppers in many Western states originate on the federally managed public lands. In order for the Federal Rangeland Grasshopper Control Program to be successful, we support cost-sharing on state and private lands and believe the federal government has the total responsibility for control on the public lands it manages.

Farmers Union believes the first priority of this program is grasshopper control. It is imperative to coordinate federal, state, and private control measures to meet specific needs.

We recommend where necessary:

1. Early detection and control on public lands.
2. Multiple spraying on borders, during migration and for late hatches.
3. Common sense when establishing rangeland/cropland ratios in spray blocks recognizing control is the goal.

Since severe grasshopper damage is a natural disaster, similar to floods or hurricanes, we recommend that federal assistance be made available through grants.

F. Noxious Weeds

Coordination and funding is urgently needed for improved control of noxious weeds on public lands.

G. Reclamation Lands Family Farm Policy

The Reclamation Reform Act, approved by Congress and the President in 1982, is in the process of being implemented and Farmers Union is interested in seeing that no harmful changes are made in the law before it has even had a chance to function.

One provision of Public Law 97-293 requires imposition of "full-cost" water charges upon corporation and other large farming units exceeding the new acreage limit. Already efforts have been announced to seek repeal of the "full-cost" provision, a step which Farmers Union regards as likely to lead to renewed abuses by conglomerates and off-farm and alien investors who had so blatantly violated the law before.

With both Western water and Treasury dollars rather precious items, it would be poor public policy to reopen the doors to new and undeserved subsidies.

H. Eminent Domain

The 5th Amendment of the Constitution of the United States assures that "private property (shall not) be taken for public use without just compensation." We urge constant vigilance in order that this constitutional assurance is not weakened or violated.

I. MX Missile System

We are opposed to the MX Missile System (especially land-based) because of concerns over cost, effectiveness, land and water usage, and the escalation of the global nuclear arms race.

J. Zoning

The rights of those most affected by land zoning decisions must be fully protected at all levels of the decision-making process. The destruction of farm units must be avoided if at all possible.

Farmland near areas already converted to urban or other uses which may be growing in speculative value should be taxed as agricultural land as long as it is so used.

In water-scarce areas, when it is proposed to change use of land from agriculture to other uses, an economic and environmental study should be required to determine the effects on future water supplies.

We oppose the use of federal or state funds to build single purpose flood control projects for the protection of those who insist on building in known flood plains. We favor zoning laws prohibiting construction in known flood plains.

We look with favor on the idea of forming "agricultural districts" in areas outside cities and towns, creating the opportunity for such entities to incorporate to provide rural people with greater decision-making powers in matters of land use.

We support efforts by states to enact "right-to-farm" legislation.

K. Conservation

1. Government Programs

Soil and water conservation programs have proven highly effective for pollution abatement and soil conservation.

These programs of conservation and resource inventory must be funded at levels that will insure the continued protection of our nation's soil and water resources. Funding cuts that jeopardize the continuation of USDA-SCS cannot be tolerated.

Such financing should be on a long-term basis, providing federal commitments for at least five years ahead and providing conservation assistance on a level designed to meet the needs as shown in the federal land conservation inventory and the appraisals under the Resource Conservation Act of 1977 and other federal studies.

The needs are so widespread and urgent that any "targeted conservation" program would, if it were honest and motivated by something more than budget savings, have to call for a vast expansion of federal conservation investment.

We request that federal financing to meet clean water and air standards of the Environmental Protection Agency (EPA) be available to farmers from funds appropriated by Congress for this purpose, and that such funds be administered through the farmer-elected ASCS committees.

We urge continued improvement and acceleration of the small watershed programs under Public Law 566.

The Great Plains Conservation Program, Agricultural Conservation Program (ACP), Rural Clean Water Program, Water Bank, and other soil and water programs have proven their value in achieving land-use adjustment and the conservation of land and water. Such environmental programs should be substantially strengthened and expanded and include ACP cost-sharing for both replanted and new shelter belts, and noxious weed control.

We urge that ACP be funded at not less than the \$500-million level as originally authorized by the Soil Conservation and Domestic Allotment Act of 1937, and we strongly urge that the conservation cost-sharing delivery system for all rural federal conservation cost-sharing funds be through the farmer-elected ASCS committee system.

Farmers should be able to put strips into grass for soil conservation purposes and use these strips year after year for diverting and conserving without losing base.

We recommend that the payments due to cooperating farmers in the Conservation Reserve Program be in cash, rather than in certificates or CCC commodities. We are concerned about the effects of the Conservation Reserve Program (CRP) upon our cooperatives, communities, and the future land ownership in our nation. As specified in the Food Security Act of 1985, enrollment in the CRP should be discontinued in any county when 25 percent of the cropland in the county is enrolled.

This same 25 percent limit should be applied to the combination of CRP and 0/92 program use in any county.

The program needs to be closely monitored to ensure that adequate weed, insect and fire control measures are instituted and that proper planning takes place when the 10-year program concludes, especially regarding procedures to enable beginning farmers and ranchers to acquire these acres.

The cost of applying the required conservation practices demanded by the conservation compliance sections (1211 and 1212) of the 1985 Farm Act should be fully funded or at least 50 percent of the cost shared.

It is unfair to ask farmers to pay for these costs.

2. Sodbuster and Swampbuster Provisions

Farmers supported the sodbuster and swampbuster provisions of the 1985 farm law after witnessing massive conversion of fragile range, pasture and swamplands into crop production by speculators who not only abused the land, but also abused farm commodity, credit and disaster programs, as well as the tax codes.

We are now deeply concerned that the regulations are not keeping faith with our support or the intent of Congress. As producers, we urged careful and judicious implementation of the regulations to permit normal, accepted farming practices within approved conservation plans, while preventing the readily identifiable abuses of soil and water resources that led to the enactment of these provisions.

We ask Congress to reaffirm that:

a. Producers should have timely and complete determinations by qualified SCS technicians as to the location of highly erodible soils and wetlands so that producers can make informed decisions on their production plans for their land.

b. Inadvertent conversions should result in penalties that are proportionate to the error, and should not be treated the same as intentional conversions in which all program benefits are lost.

c. Due process rights are observed both in filling out federal forms and in responding to allegations of violations.

d. The Conservation Reserve, Waterbank, and similar programs are fully funded and made available to economically assist farmers in complying with the provisions.

e. Shallow depressions that may be temporarily wet, but are normally cropped, be exempted from the swampbuster regulations.

3. Predator and Rodent Control

Since the 1931 Animal Damage Control Act (ADC) mandates that the federal government shall protect the livestock industry from predatory loss, we recommend that the original intent of the law be enforced.

Judicious use of Toxicant 1080 and M-44 cyanide guns, use of aerial shooting in winter, trapping, and other control practices must be continued on federal, state, and private lands to control coyotes and other predators.

If an adequate ADC program is not available to farmers, we recommend that a federally financed indemnity program be instituted to pay for livestock losses.

L. Wildlife

We oppose acquisition of productive farmland through use of the eminent domain process to extend wildlife habitat. The arbitrary designation of portions of farm units for wildlife propagation on land designated for wildlife mitigation, without negotiation with a willing farm operator, is disruptive and destructive to the efficiency of family farm management.

M. Army Corps of Engineers

We urge that the authority of the Army Corps of Engineers be limited to its historic role of maintaining navigable waterways, dams, and facilities on public lands.

STATEMENT OF
NORTH DAKOTA FARMERS UNION
SUBMITTED TO
SENATE COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON CONSERVATION AND FORESTRY
SENATOR PATRICK LEAHY, CHAIRMAN
MARCH 24, 1988

SENATOR WYCHE FOWLER, JR., SUBCOMMITTEE CHAIRMAN

The North Dakota Farmers Union is a general farm organization with over 32,000 North Dakota farm family members. Historically, the North Dakota Farmers Union has been an advocate of conservation programs. The family farmers of North Dakota have long been interested in the conservation of precious natural resources which they currently manage.

Many times in the past when soil conservation programs were threatened with funding cuts which would have severely crippled their effectiveness, family farmers and their organizations were in the forefront to restore funding to these critical programs.

It is consistent with this historical support for conservation programs that we supported the 1985 Food Security Act which contained the swampbuster provisions. We had heard the horror stories about the various regions in this nation where speculators knowingly converted thousands upon thousands of acres of range and swampland to crop production. Once the land was converted, the speculators then proceeded to use every available federal program, including disaster programs, to reap an unjustified bonanza for themselves.

North Dakota Farmers Union believes that the intent of Congress was to prevent such exploitation from occurring in the future. Thus, we were very concerned when the interim rules and regulations were published, and we discovered areas where modification was justified. In reviewing USDA's document entitled "Environmental Assessment of Wetland Conservation Provisions for the Food Security Act of 1985," dated June, 1986, we saw that in almost every instance where there was a choice to be made, the most difficult choice for farmers to accept was chosen.

We cannot believe it was the intent of Congress to create the antagonistic regulations which presume farmers don't care about their

environment and are interested only in destroying wildlife habitat. Farmers are accused of wholesale destruction of wetlands. This view is simply not true. Many wetlands are and have been destroyed by urban development and city expansion. What penalties are being assessed to those developments?

In our response to the interim regulations, we emphasized that the regulations must allow normal accepted farming practices which are consistent with sound conservation plans and resource management. We still hold that view and with these criteria in mind, would propose the following changes to the swampbuster rules and regulations which we feel are the minimum changes necessary to garner farmers' support for the continuation of the swampbuster program.

The identification and determination of wetlands must be completed at the earliest possible date. Farmers have the right to know what they are facing when it comes to compliance with the "no drainage" provisions in the swampbuster legislation.

The eight eastern North Dakota counties were placed on a fast track, and the identification of wetland areas is completed. However, we are informed that the determination process, which tells a farmer whether a wetland identified on his property has been prior converted, or is still a wetland, and what type of wetland it may be, will take a more detailed examination and will take several years to complete. We feel Congress must appropriate more funding to the Soil Conservation Service to increase its staffing so the process of determination can be completed before farmers go into the field this spring. The producer needs this minimum information to avoid any inadvertent violations of swampbuster provisions. Without this minimal information, the farmer with many shallow nuisance wet areas could be subject to the full penalties of swampbuster for inadvertent conversions. Currently, the definition of a wetland is an area which has a hydric soil and the potential of producing hydrophytic plant life. This definition could encompass the entire Red River Valley. Because of this, the Red River Valley, the eight counties in eastern North Dakota and western Minnesota, have received the special attention in wetland identification I spoke of earlier. Now the critical process of determination needs to be finalized as soon as possible.

We feel the definition, as currently drafted, is much too broad to administer with any fairness, equity and consistency. We would propose that a simple measurement be included in the definition of a wetland which would exempt any lands which have been farmed three out of the past five years. Such land should be considered prior-converted and marked on any maps. Should this criteria be adopted, the Type I wetland, which only occasionally appears in a field as a wet year nuisance spot, would not expose a farmer to the risk of losing all his government program benefits through an inadvertent dead furrow left by a plow.

To initiate a wetlands determination, a producer must answer "yes" to either Section 7 or 8 of USDA's "Highly Erodible Land and Wetland Conservation Certification" Form 1026. These two sections presume a producer guilty if he answers yes to either question. For instance, in question 8 the language, "Do you plan to convert any land including wet areas for the production of an agricultural commodity?", automatically suggests that, whether the land could be classified as a wetland or not, by using the term "any land", the farmer plans to violate the law. We prefer a positive clear-cut form which allows a farmer to request a wetlands determination without having to indicate that he plans to convert a wetland.

Farmers are planning next year's production and are understandably concerned that a determination be made immediately on their farms. The severity of the penalties is enough to make any producer with wetlands on his property extremely nervous.

As presently written, when a producer is reported to have converted a wetland, or is under suspicion of illegally converting a wetland, all penalties--loss of loans, payments, etc. are enforced. In essence, the producer is guilty until proven innocent. We feel that the farmer should be proven guilty before penalties are assessed and the farmer who inadvertently converts a wetland be given the opportunity to restore it.

A farmer who inadvertently converts a wetland and one who intentionally destroys a wetland are treated the same under the present rules. They both lose all government programs. We ask that this "all or nothing" penalty be changed. Authority for determining penalties should rest with the county ASCS committee.

The reporting of possible violations by interested parties must be in the form of a signed complaint. Otherwise, farmers may be required to continually respond to or defend their actions as the result of personal differences with another citizen. The signed complaint would eliminate the potential of nuisance complaints. Basically, farmers are asking that they be granted the right of normal due process under law.

We urge Congress to consider the economic value of the wetlands. The environmental community feels that wetlands have a value in the preservation of wildlife and also to enhance the production of wildlife. The farmers feel that small nuisance wetlands have a negative effect on their income. A wetland which delays planting generally reduces yield. A wetland that is not planted is still subject to property taxation. Therefore, we suggest that wetlands be included in the Conservation Reserve Program. If a national priority to preserve wetlands exists, then expansion of CRP is a reasonable method for wetland preservation. Wetland preservation could help to:

1. Control pollution problems in wetlands and waterways.
2. It would address the issue of less groundwater contamination as small wetlands and surrounding enhancement lands would buffer fertilizer and chemicals.
3. In addition, more small wetlands would collect water for groundwater recharge.

Either the Conservation Reserve Program needs to be changed to include payment for wetlands or the waterbank program must be funded at an adequate level to compensate producers for their efforts in wetlands management. If the Conservation Reserve Program were expanded, the wetlands could be squared out and a band of land around a wetland could be managed to ensure water quality and provide wildlife habitat.

Lastly, it has been charged that the concerns over the swampbuster provisions of the 1985 Food Security Act are only a North Dakota issue. It has been stated that other states have had no problems with the regulations as released. We have received requests from the Farmers Union leadership and members in both Minnesota and South Dakota on this issue. These two states, according to news reports, were not affected by the enforcement of the final swampbuster rules as severely as North Dakota was affected. We understand

-5-

many determinations were verbally made, and now farmers are being told that the decisions and agreements which were reached earlier are now being reversed. These new actions by Minnesota and South Dakota SCS personnel have understandably generated producer concerns in other areas besides North Dakota. However, North Dakota is in the unique position of having the majority of the remaining potholes in the nation. Obviously, until the determination and identification process is completed, there will be great concern from the North Dakota producer.

North Dakota Farmers Union believes that the intent of Congress in the enactment of the swampbuster provisions of the 1985 Food Security Act was to stop reckless speculators who were converting vast acres of fragile swampland and rangeland to the production of agricultural commodities to benefit from existing farm programs and then sell the new, higher valued cropland to unsuspecting farmers at a high profit. We don't believe that it was the intent of Congress to change existing farm practices and subject farmers to penalties for continuing farming practices on land which has been farmed for many years--wet or dry.

We are requesting the assistance of this committee in carrying out the intent of Congress by helping to change the rules and the implementation of the swampbuster provisions.

Thank you very much.

Respectfully submitted,
NORTH DAKOTA FARMERS UNION


Alan Bergman, President

**THE WILDLIFE SOCIETY**

5410 Grosvenor Lane • Bethesda, MD 20814 • Tel. (301) 897-9770

April 9, 1988

The Honorable Wyche Fowler, Jr., Chairman
Subcommittee on Conservation and Forestry of
the Senate Agriculture Committee
SR-328A Russell Senate Office Building
Washington, DC 20510

Dear Chairman Fowler:

The Wildlife Society appreciates this opportunity to present the enclosed comments and recommendations regarding the implementation of the Swampbuster and Conservation Reserve provisions of the 1985 Food Security Act. The Wildlife Society is an international association of professional wildlife managers working in the public and private sectors to promote wise stewardship of our natural resources.

Please enter the attached testimony into the official record of the March 24 oversight hearing regarding the 1985 Food Security Act.

Sincerely,

11
Harry E. Hodgdon
Executive Director

SWAMPBUSTERThe Need for Swampbuster

The intent of Congress to impede the destruction of wetlands resulting from agricultural conversion was made clear with the enactment of the Swampbuster provision of the 1985 Food Security Act. By denying eligibility to farmers for certain federal assistance programs if they drain wetlands to produce agricultural commodities, Congress has unequivocally expressed its unwillingness to allow federal subsidies to continue to finance agriculturally related wetland destruction.

Nearly half a million acres of U.S. wetlands are being destroyed annually, primarily as the result of agricultural practices (Tiner 1984). Thus, the passage of Swampbuster was timely, and as such, the need for its enforced implementation is imperative.

Benefits of Wetlands

The reliance of wildlife on wetlands has been well documented. While furbearers such as mink, muskrats, beaver and otter are commonly associated with wetland habitats, deer, rabbits, song and marsh birds, pheasants, grouse, and a variety of reptiles, amphibians and fish also depend on these areas. Wetland vegetation generally provides necessary food and cover, while aquatic invertebrates often provide an additional source of food (Larson 1973).

Perhaps of paramount importance is the impact of wetlands loss on the breeding, migrating and wintering habitats of North American waterfowl populations. Tiner (1984) concluded that the Prairie Pothole Region of the Upper Midwest provides the most important non-coastal marsh areas for North American waterfowl production. Although only 10 percent of North American ducks breed in this area, the area produces a disproportionate percentage of the continent's waterfowl (50% or greater; Tiner 1984).

The United States and Canada signed the North American Waterfowl Management Plan in May, 1986. This joint agreement recognizes the importance of the North American waterfowl resource, and outlines steps for waterfowl conservation through population and habitat objectives. The protection of existing wetlands, as well as the slowing of wetland conversion (as called for by Swampbuster) will serve to promote the goals of this international plan.

The benefits of wetlands are not limited to wildlife. As an integral link in the hydrologic cycle, wetlands provide other important functions such as providing ground water recharge, water quality improvement through retention of sediment,

fertilizer and pesticides, and erosion and flood control (Larson 1973).

Concerns About the Final Rules

While the final rules for implementing the 1985 Food Security Act are a considerable improvement from the interim rules, there remains some inherent problems. First, under the final rules, a farmer who drains wetlands for alleged weed control, field convenience, or other perceived problems is not considered to be in violation of Swampbuster. As a result, allowing wetland drainage for the sake of drainage needs to be corrected. This could be accomplished through sanctions against operators draining wetlands but not planting them with agricultural commodities.

Second, the continued practice of allowing maintenance of existing drainage on converted wetlands is contrary to the purpose of the legislation. While the final rules explicitly preclude bringing new, additional wetland acreage into production under the semblance of maintenance and improvement, this is insufficient. Continued wetland conversion through maintenance should be disallowed. Those lands should be permitted to again become functioning wetlands.

Prairie Potholes

There has been some dispute, particularly among North Dakota farmers, as to whether or not Swampbuster was intended to apply to prairie pothole wetlands. The language of the final rules expressly state "... potholes and playas and other seasonally flooded or ponded wetlands, retain significant wetland functions even if the water regime was modified before December 23, 1985." Thus, they are not to be considered previously converted wetlands if these areas continue to meet the wetland criteria. Furthermore, the final rules state that "no further action can be taken to increase effects in the water regime of these areas unless [Soil Conservation Service] SCS makes a minimal effects determination."

It should be made clear that Type I wetlands are not synonymous with Class I wetlands. The Type I wetland designation originated in a 1959 U.S. Fish and Wildlife Service (FWS) publication (Circular 39) which described Type I wetlands as shallow seasonally flooded wetlands, including the smaller temporary prairie potholes, hardwood flooded plains along major river systems, and the playa lakes. Class I wetlands refer to a complex system developed for use on wetlands in the prairie pothole region by FWS researchers Stewart and Kantrud in the 1960's. Exclusion of "Type I" wetlands from Swampbuster protection would make 30 percent of the wetland acreage in North Dakota, and a comparable number of acres in other pothole states,

subject to drainage. Clearly, it was the intent of Congress to include the protection of prairie pothole wetlands under Swampbuster.

Enforcement

Successful implementation of Swampbuster hinges on producer compliance and agency enforcement. The current lack of enforcement and virtual non-compliance under this provision is a problem that demands immediate attention.

In North Dakota, for example, FWS officials reported in excess of 150 potential Swampbuster violations to local Agricultural Stabilization and Conservation Service (ASCS) offices in 1987. According to a correspondence from a county ASCS Executive Director, only 3 producers have had benefits withheld to date (Janice Goldman-Carter, per. comm.).

Self-Certification

Allowing the use of Form AD-1026, whereby farmers self-certify that they will not produce an agricultural crop on converted wetlands during the crop year they wish to receive benefits, is not appropriate. Periodic monitoring by officials is insufficient to ensure producer compliance. Rather, SCS, in consultation with the U.S. Fish and Wildlife Service, should be responsible for making wetland determinations without depending on the producer.

Appeals

Under section 12.12 of the final rules, farmers may appeal a wetland determination if they feel it to be erroneous. Conversely, there is no mechanism for the public to appeal "minimal effects determinations" made by SCS. Thus, a procedure is needed to permit concerned individuals to question "minimal effects determinations."

CONSERVATION RESERVE PROGRAM

Inclusion of Wetlands

The intent of the Conservation Reserve Program (CRP) is to convert 40 to 45 million acres of highly erodible cropland into permanent cover through the establishment of grass, trees or wildlife cover under 10-year contracts. In addition to lands already eligible under this provision, the inclusion of wetlands which have prior cropping histories, or which were converted prior to the passage of the Act, should also be eligible enrollment. Providing financial incentives to farmers for restoring wetland values to previously converted lands makes

sense from both conservation and economic standpoints. Furthermore, an increase in the 45 million acre ceiling imposed on the CRP enrollment to 65 million acres would better serve the ultimate goals of reducing soil erosion and commodity surplus.

Tree and Shrub Plantings

An increased focus on tree plantings is also highly desirable. By encouraging the planting of trees and shrubs where suitable, ASCS could contribute to reducing soil erosion, increasing timber supplies, and enhancing wildlife and water quality values. Acreage that has been planted to trees and shrubs is also more likely to remain out of agricultural production longer than lands that have been planted with grasses.

Extension of the CRP

Although the objectives of the CRP are commendable, the question remains as to how to ensure that the CRP benefits are maintained beyond the 10-yr contract period. While lands enrolled in the CRP program will subsequently become subject to conservation compliance, a preferable alternative would be to continue funding for the CRP, providing benefits as an incentive to permanently keep these fragile lands out of agricultural production.

MULTIYEAR SET-ASIDES

Although there is an existing provision in the Food Security Act that permits the Secretary of Agriculture to enter into multiyear set-aside contracts, to date, the Secretary has failed to implement this option. As a result, producers are reluctant to commit funds to establishing long-term cover on annual set-aside lands. Thus, this acreage often lays fallow, lacking the benefits of vegetative cover to reduce erosion and provide wildlife habitats.

S. 2106 would amend the Food Security Act to require the Secretary of Agriculture to use multiyear set-asides to establish wildlife habitats and feeding areas. This bill calls for 3 year set-aside contracts which have "vegetative cover that is capable of maintaining itself through the contract period to provide improved soil tilth and fertility, water quality enhancement, wildlife habitat, and natural beauty." Additionally, S. 2106 provides for cost-sharing incentives for producers establishing appropriate vegetative cover on these lands. The Society fully supports this bill.

CONSERVATION COMPLIANCEAlternative Conservation Systems

While the final rules provide for the implementation of Alternative Conservation Systems (ACS) "based upon the SCS field office technical guide, addressing considerations of economic and technical feasibility and other related factors", in reality, levels of allowable soil loss adopted by many ACSs do not even come close to approaching [T]. This is of great concern, and we urge SCS to decrease the leniency of standards used when making field office determinations of allowable soil loss limits.

Conclusions

Due to the imperiled nature of America's wetland resources, the protection against further loss and degradation afforded by the Swampbuster provision of the 1985 Food Security Act is an idea whose time has come. The ASCS, SCS, and FWS must continue to coordinate their activities and efforts to ensure that the actions of agricultural producers that participate in USDA programs do not further endanger our already depleted wetlands. Steps must be taken to improve Swampbuster, ensure its enforcement, and correct the deficiencies present in the field implementation of the final rules.

In addition, increased attention should be focused on how the objectives of the Conservation Reserve Program can best be achieved, including an increase in the total acreage scheduled for enrollment, inclusion of wetlands in the reserve program, increased emphasis on tree and shrub planting, and an examination of mechanisms to extend enrollment of reserve lands following the conclusion of the 10-year contracts. Furthermore, action should be taken to establish multiyear set-asides and strengthen standards of allowable soil loss limits.

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LAND IMPROVEMENT CONTRACTORS OF AMERICA

STATEMENT OF JIM JACOBS

PRESIDENT

LAND IMPROVEMENT CONTRACTORS OF AMERICA

TO THE

U.S. SENATE COMMITTEE ON AGRICULTURE

SUBCOMMITTEE ON CONSERVATION AND FORESTRY

HEARING ON OVERSIGHT OF CONSERVATION PROGRAMS

MARCH 24, 1988

Mr. Chairman and Members of the Committee, my name is Jim Jacobs and I represent the 5,000 members of the national trade association, Land Improvement Contractors of America. The association has organized chapters in 38 states, and members in 48.

Land improvement contractors are predominantly conservation and land preparation contractors. Our members work directly for the landowner installing many conservation and nonpoint source water pollution control measures. These measures include terraces, watersheds, farm ponds, waterways, surface and subsurface agricultural water management systems. Many of our members are also landowners and farmers themselves.

Our organization is particularly concerned about the impact of "Swampbuster" rules being implemented by the U. S. Department of Agriculture. LICA responded to proposed rules during the rulemaking process with formal comments developed by a Rules Review Panel of which I was a member.

Many of the concerns expressed in those comments now have become real problems in the field as the rules are implemented. Primary concerns are:

- A. Lack of adequate exemptions for previously cropped land.
(See attached Example of Adverse Impact.)
- B. Lack of exemption for small-area wetlands.
- C. Lack of practical and consistent definitions for determining wetlands.
- D. Lack of consistent interpretation and implementation in different states.
- E. Lack of adequate safeguards for landowners for previously cropped hydric soils that tend to revert to wetlands.

Discrepancies and inequities in the implementation of these rules have already shown up in many states. Different SCS and ASCS state offices have different interpretations of the regulations. An unnecessarily complicated situation has had a frustrating impact on landowners. Many are afraid to do any conservation work for fear of doing the wrong thing and thus lose all federal farm benefits.

Observations Concerning the Swampbuster Experience

The observations related here are based on numerous meetings or

discussions with federal, state and county U.S.D.A. officials; extensive review of U.S.D.A. rules, correspondence, and procedural guidelines; many discussions with farmers and affected agri-businesses; and personal experiences of our members as professional conservation and nonpoint contractors.

1. The defining of a wetland is the major problem. The 1985 law introduced new terms (Hydric soils & hydrophytic vegetation) to the farming industry. Did Congress know that large portions of prime farmland in the U.S. are hydric soils and that the list of hydrophytic vegetation would include over 1350 species?

2. The intent of the law was to protect existing wetlands. Farmers assumed wetlands began at the edge of cattail-sloughs that had not been farmed. Complex Swampbuster rules promulgated after passage of the law have essentially provided the means of declaring wet areas in existing cropland as wetlands. Was it the intent of Congress to convert cropland back to wetland?

3. It appears the result of the rulemaking process has been to substantially expand the intent of the law.

4. Development of complex rules and guidelines to provide information for farmers to insure eligibility for U.S.D.A. benefits has created an atmosphere of suspicion. County SCS & ASCS personnel have long been the farmer's friend and were an important catalyst for a strong agricultural economy. The confusion and intimidation aspects of the conservation measures of the Farm Bill now have placed some of these personnel in an adversarial role.

5. In one area of the country federal and state officials are distributing a form which encourages citizens to report farmers to the government for suspected violations of Swampbuster provisions. The form is called a "Wetland Conversion Report." A copy is attached.

SUMMARY

What started out as a simple idea to preserve existing wetlands, (not wet areas) has evolved into an idealistic goal to turn farmland back to wetland. We do not oppose preservation of existing wetland habitat but respectfully suggest that reasonable and realistic goals must be pursued. To arbitrarily restrict landowners from normal routine activities necessary for economic survival is not conducive to long term harmonious cooperation between urban and rural sectors of the country.

Therefore, LICA recommends the following provisions be instituted with regard to Swampbuster:

1. Detailed provisions for exemption of land that has been previously cropped, based on ASCS records during the base period.
2. An exemption for land areas of smaller size.
3. Clearer guidelines for identifying wetlands and converted wetlands under Swampbuster.
4. Landowner protections for lands prone to revert to hydric conditions that have been regularly cropped.

That concludes our statement. We greatly appreciate this opportunity to present these views.

EXAMPLE OF SWAMPBUSTER'S ADVERSE IMPACT ON LANDOWNERS
UNDER CURRENT REGULATIONS

SITUATION:

A farmer owns 500 acres of land which is divided into separated fields of 100 acres each. Some of the land in each field can be classified as "hydric" and "depressional", but overall it is marginally productive, and the landowner has been farming all of it continuously since in 1970. In 1982 the farmer decides to undertake a program to enhance the productivity of the land.

Since expendable cash is in short supply, he decides to improve one field every other year. The improvement program is to include an underground drainage system and waterways. The farmer has two fields completed when Swampbuster becomes law as part of the 1985 Food Security Act (Farm Bill).

QUESTION:

Can the farmer continue his improvement program on the other three fields and still receive federal farm program benefits?

ANSWER:

NO...! Under USDA regulations the farmer CAN continue to farm the unimproved part of the land in the same condition it's in, but he CANNOT change the hydric conditions of the remaining three fields and remain eligible for farm program benefits.

IMPACT ON LANDOWNER:

1. He can no longer continue to improve the productivity of his land and receive federal farm benefits and thus stay on an equal footing with other farmers receiving program benefits.

2. The landowner's rights to make reasonable economic decisions involving his land have been severely abridged, without compensation.
3. The value of his land has been diminished through a direct action of the federal government.

SOLUTION:

Use ASCS cropping history records as the basis for exempting from Swampbuster provisions all land that was cropped during a certain base period.

WETLAND CONVERSION REPORT

To: Agricultural Stabilization and Conservation Service, County Executive
 Director _____ County _____
 Date of Report: _____

Wetland conversion (draining, dredging, filling, leveling or other manipulation) was observed in progress, or has recently been completed, at the location described below. This conversion was noted by the observer while conducting routine work assignments. The landowner or person responsible for the conversion could lose certain USDA benefits if the converted wetland is planted to an agricultural commodity. This report is provided for your information relative to the Wetland Conservation provisions of the Food Security Act of 1985.

Please place this document in the landowner's file for future reference.

Date of Observation: _____ Observer _____

Observer address: _____

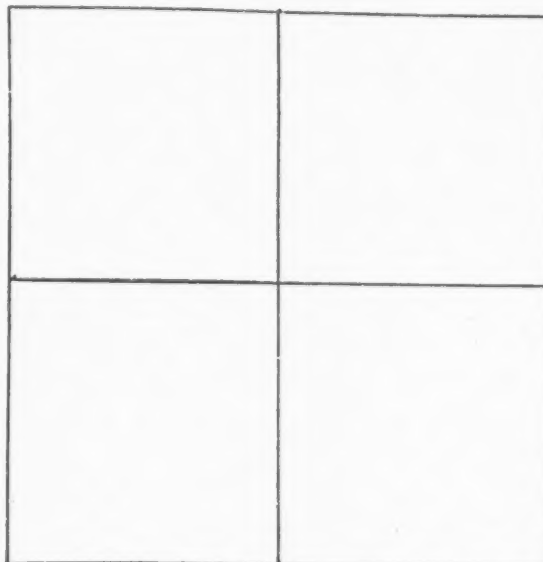
Location of conversion: County _____ Twp. _____ Range _____ Section _____

Wetland Characteristics (type, vegetation, size) _____

Conversion Activity Observed _____

Photos: Yes _____ No _____

Location Map:



Scale:
 4 inches =
 1 mile

cc: U.S. Fish and Wildlife Service Agriculture Program Coordinator

Extension Service

Statement of Dr. Myron D. Johnsrud, Administrator, Extension Service, U.S. Department of Agriculture, before the Subcommittee on Conservation and Forestry.

Mr. Chairman, members of the Committee, thank you for the opportunity to submit a statement regarding the programs and activities of the Cooperative Extension System that are related to the conservation provisions of Title XII Food Security Act of 1985 (16 U.S.C. section 3801 et. seq.)

Since the passage of the Food Security Act of 1985, State Extension Services throughout the Nation have been working cooperatively with the Agricultural Stabilization and Conservation Service (ASCS), Soil Conservation Service (SCS), Farmers Home Administration (FmHA), Forest Service (FS) and the Federal Crop Insurance Corporation (FCIC) to insure that all farmers and members of the Agribusiness community understand not only the provisions of the legislation and attendant regulations but also their implications for the agricultural community. With our responsibilities in the area of education and information we participated with other agencies of the Department to design and implement a strategy for meeting this information and education challenge. The primary objective of our initial efforts focused on delivering information and education to farmers on the Conservation Reserve program. Across the Nation, states used such methods as fact sheets, brochures, radio, television, posters, displays and slide sets to get the information out to farmers through both county and state offices.

We are currently strengthening our efforts in the area of conservation compliance. This has been both a significant challenge and accomplishment in view of critical competing demands to address other National and local program concerns regarding agricultural profitability and competitiveness.

The major objective of this focus is to develop and deliver educational programs that provide farmers and landmanagers with the understanding of how to integrate and incorporate conservation practices and measures into their agricultural production process. The accomplishment of this objective is not going to be easy. It will require all of our skill and creative talents. Individual conservation plans are a fundamental element. We estimate that approximately 40 percent or 800,000 of the Nation's farmers must be assisted in the development of conservation plans between now and December 31, 1989. We estimate that it will cost the Cooperative Extension System approximately \$6 million annually to accomplish this task in two years.

In order to be successful, this must be a coordinated interagency effort. We have recently executed a Memorandum of Understanding between the Soil Conservation Service and the Extension Service to establish more effective coordination mechanisms. The Memorandum of Understanding provides the framework for the development and implementation of a coordinated plan for education and technical assistance in each State. Within the context of this agreement State Extension Services will develop and deliver information and education programs that are coordinated with and complement the technical assistance provided by the Soil Conservation Service. These programs will be directed primarily at the development of individual farm conservation plans. In those States where the plan requires a commitment of resources beyond the

capability of the State Extension Service, the Memorandum of Understanding authorizes the transfer of funds to Extension from the Soil Conservation Service to support these specific, planned education programs. However, because of increased workloads, it is probably unrealistic to expect that SCS can sustain such fund transfers.

Recent activities by the Cooperative Extension Service at the University of Illinois are a good example of what we are accomplishing. They have developed a package of educational materials that will help farmers and landmanagers understand and identify their erosion problems and with technical assistance from SCS develop their own conservation plans. These materials are applicable Nation-wide and currently are being distributed by SCS to each county office in the country. This past Tuesday night (March 22, 1988) a prime-time program on the conservation provisions and implications of the Food Security Act was televised by satellite in the eastern cornbelt states. This program developed by the Indiana Cooperative Extension Service in cooperation with SCS will be made available to all States. These are but two examples of how States are responding to this challenge.

Mr. Chairman, in addition to providing educational programs on how farmers may incorporate conservation measures into their production processes, we must insure that their enterprises remain profitable. This concludes my statement, Mr. Chairman, thank you for this opportunity. We will be pleased to respond to any additional information you may need.



The Izaak Walton League of America

INCORPORATED

DEFENDERS OF SOIL, AIR, WOODS, WATERS, AND WILDLIFE

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STATEMENT of the IZAAK WALTON LEAGUE OF AMERICA

**before the Subcommittee on Agricultural Research,
Conservation, Forestry and General Legislation of
the Senate Committee of Agriculture, Nutrition
and Forestry**

**on the Food Security Act of 1985,
Title XII**

**by Ann Y. Robinson
Soil Conservation Coordinator
Izaak Walton League**

March 24, 1988

STATEMENT OF ANN Y. ROBINSON, SOIL CONSERVATION
COORDINATOR, IZAAK WALTON LEAGUE OF AMERICA

This testimony is submitted on behalf of the Izaak Walton League in support of the conservation provisions of the 1985 Food Security Act -- the conservation reserve program (CRP), sodbuster, conservation compliance and swampbuster.

The Izaak Walton League of America (1701 N. Ft. Myer Drive, Suite 1100, Arlington, VA 22209) is a national conservation organization comprised of about 50,000 concerned citizens, many of whom are rural residents and farmers. Indeed, nearly 50 percent of our members live in the farming states of Iowa, Indiana, Minnesota and Illinois. At last year's national convention, our members unanimously passed a resolution endorsing the principles of soil, water and wildlife conservation embodied in the conservation provisions, and opposing any changes that would weaken Congress' intent to protect the soil, water, wetlands and wildlife resources of the United States. That resolution is included with this statement.

League members have been phoning and writing letters to their representatives on behalf of the conservation provisions. They have sponsored talks and slide shows to better understand the potential these provisions offer. IWLA members have volunteered to plant trees on CRP land. They have assisted the Soil Conservation Service by calling landowners to give them more information about compliance, and to encourage participation in the CRP. Such activities are being taken on by urban chapters, as well as chapters from rural areas.

This strong support has developed rapidly because the Conservation Title of the 1985 Food Security Act is a progressive piece of legislation that provides an extraordinary conservation opportunity. The Conservation Reserve Program (CRP), sodbuster, conservation compliance and swampbuster were inspired by an understanding of severe problems that exist in the countryside -- soil erosion, water pollution and loss of wildlife. Since Congress passed the Conservation Title, these provisions have been further refined by the give-and-take process of rulemaking.

This mix of law and regulation now gives us a set of measures that are good for the land and for the taxpayer. They will bring much-needed improvements in water quality by reducing the amount of sediments and farm-related pollutants entering streams and lakes. By saving wetlands, the provisions will decrease groundwater pollution and alleviate flooding. This

legislation is a needed relief for wildlife that has been hard hit in recent decades by agricultural practices that devastate habitat. It also benefits farmers by helping to reduce surplus commodities, and thus, improve market prices.

Unfortunately, these provisions have barely had a chance to work. The CRP is only a little over half-way to its goal. Sodbuster and swampbuster are only starting to have an effect, now that the final rules are out. Conservation compliance begins in earnest in 1990.

Sodbuster, conservation compliance and swampbuster will help make USDA subsidy programs, and soil and water conservation programs, more consistent. None of the provisions force a farmer to do anything. They acknowledge the public's interest in curbing soil erosion and maintaining our remaining wetlands. If a farmer continues to use methods that cause excessive erosion or drains valuable wetlands, the new law says he or she can do it alone, without taxpayer support. Many farmers support this concept and consider it a fair deal, especially with the CRP to ease the transition to more responsible farming practices.

The Conservation Title of the 1985 Food Security Act provides desperately needed remedies for years of destructive practices. While the provisions are not perfect, they are one of the best major pieces of agricultural legislation this country has passed for years. Politicians, farm representatives and agribusiness publicly laud the Farm Act's goals. At the same time, many are working to undermine the Act. For example, North Dakota farm groups and elected officials have been dogged in their efforts to weaken swampbuster. The national Farm Bureau wants USDA to back down on compliance by extending the deadlines for implementation. If these and other such attempts are successful, the legislation will be gutted and have little impact on soil erosion and water quality. I urge you not to let this happen.

Thank you for your consideration. If you have any questions, or would like a copy of our report, "Saving Soil and Wildlife: The Promise of the Farm Act's Conservation Title," please contact me at the IWLA Upper Mississippi Regional Office, 6601 Auto Club Road, Minneapolis, Minnesota, 55438, phone (612) 941-6654.

Resolution of Izaak Walton League of America, Assembled in
Convention in St. Paul, MN, July 16-18, 1987.

Preserving the Conservation Title of the 1985 Food Security Act

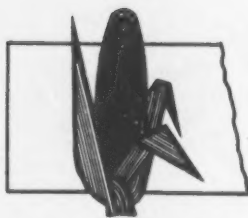
The Conservation Title of the Food Security Act of 1985, commonly known as the Farm Act, has been called the conservation opportunity of the century. Its four provisions, Sodbuster, Swampbuster, the Conservation Reserve Program, and Conservation Compliance could do more for wildlife in agricultural America than all of our conservation programs combined have been able to accomplish for the past 30 years. The Farm Act also includes two other significant programs, conservation easements and the Agricultural Productivity Act, that have the potential to provide many benefits for conservation and environmental quality.

Sodbuster discourages conversion of highly erodible land to cropland. Swampbuster discourages conversion of wetlands to cropland. The 10-year Conservation Reserve Program (CRP) will put 40-45 million acres of the nation's most highly erodible farmland into soil-holding covers of grasses and trees or restore it as wetlands. Conservation Compliance will reduce soil erosion by requiring farmers producing on highly erodible land to design and implement an approved conservation plan in order to remain eligible for federal farm program benefits. The Agricultural Productivity Act would fund research and information dissemination on environmentally sound, "low-input" farming systems that reduce the amount of agricultural chemicals. Conservation easements would provide low-cost, long-term use of land for soil or water conservation purposes, wildlife habitat, or recreation on farm lands repossessed by the Farmer's Home Administration or where financially strapped farm borrowers would agree to exchange an easement for part of their indebtedness.

The need is great. One of every four crop and forestland acres is considered highly erodible. In 1982, average annual erosion was estimated at 5.4 billion tons. More than half of America's original wetlands have been drained. Many states have lost up to 90 percent or more of their wetlands, vastly reducing the habitat for waterfowl and other wildlife, adversely affecting water resources and contributing to floods.

The policies of the United States Department of Agriculture and the farming practices they favor have been the single-most detrimental influence on wildlife in agricultural areas during the last half-century, due to a host of related factors including "road-ditch to road-ditch" farming, soil erosion, nonpoint-sources water pollution, land clearing, wetland drainage and increased chemical use.

Therefore, the Izaak Walton League of America, assembled in convention in St. Paul, Minnesota, July 16-18, 1987, endorses the principles of soil, water and wildlife conservation embodied in the conservation provisions of the Food Security Act of 1985, the Agricultural Productivity Act and conservation easements of the Food Security Act of 1985, and opposes any change by liberalized regulations, "corrective" legislation, amendments to the Act, or other action or inaction, that would weaken its intent to protect the soil, water, wetlands and wildlife resources of the United States.



North Dakota

Corn Growers Association

RR1, Box 106 / Page, North Dakota 58064 / 701-668-2760

TO: Patrick J. Leahy
Senate Agriculture Committee

FROM: Robert G. Thompson, President
North Dakota Corn Growers Association

SUBJECT: Swampbuster Provision of 1985 Food Security Act

The North Dakota Corn Growers Association requests that the Swampbuster Provision of the 1985 Food Security Act not apply to lands cropped or considered cropped any one of the years 1981-1985 or to lands cropped three consecutive years in the future. The following have passed this resolution:

North Dakota Corn Growers Association
National Corn Growers Association
North Dakota Legislature
Greater North Dakota Association(State Chamber
Of Commerce)
Red River Joint Water Resource Board
North Dakota Ag Coalition
Others

The intent of the 1985 Food Security Act was to stop new land from coming into production, not stop the American farmer from becoming more efficient or put the American farmer at a competitive disadvantage with foreign producers.

The meat of the issue is land already farmed should not be subject to the Swampbuster Provision of the 1985 Food Security Act. Other recommendations are as follows:

1. Wetland Determinations: Farmers are concerned that individuals might be found in violation of Swampbuster guidelines, even though a determination of wetland areas and converted wetland areas on farmers' fields may not have been made by Soil Conservation Service (SCS) personnel. We urge that the SCS give the wetland determination process a high priority to achieve a speedy determination of wetland areas and converted areas for purposes of the Swampbuster Provision.

2. Compliance: We support the compliance provisions of the Food Security Act; however, there may be varying degrees of violations of the compliance provisions, therefore penalties that vary to fit the nature of the infraction should be adopted.

3. USDA's "Highly Erodible Land and Wetland Conservation Certification" Form 1026: We feel that two sections of this form, sections 7 and 8, presume a producer's guilt, if he or she answers "yes" to either question. For instance, in question 8, the language, "Do you plan to convert any land including wet areas for the production of an agricultural commodity. . ." is vague. The term "wet areas" may or may not mean wetlands.

4. Compensation: As the Swampbuster Provision is now written, farmers are restricted from exercising their managerial prerogatives to the land. We support farmer recommended programs that provide annual compensation to landowners for wetland protection.

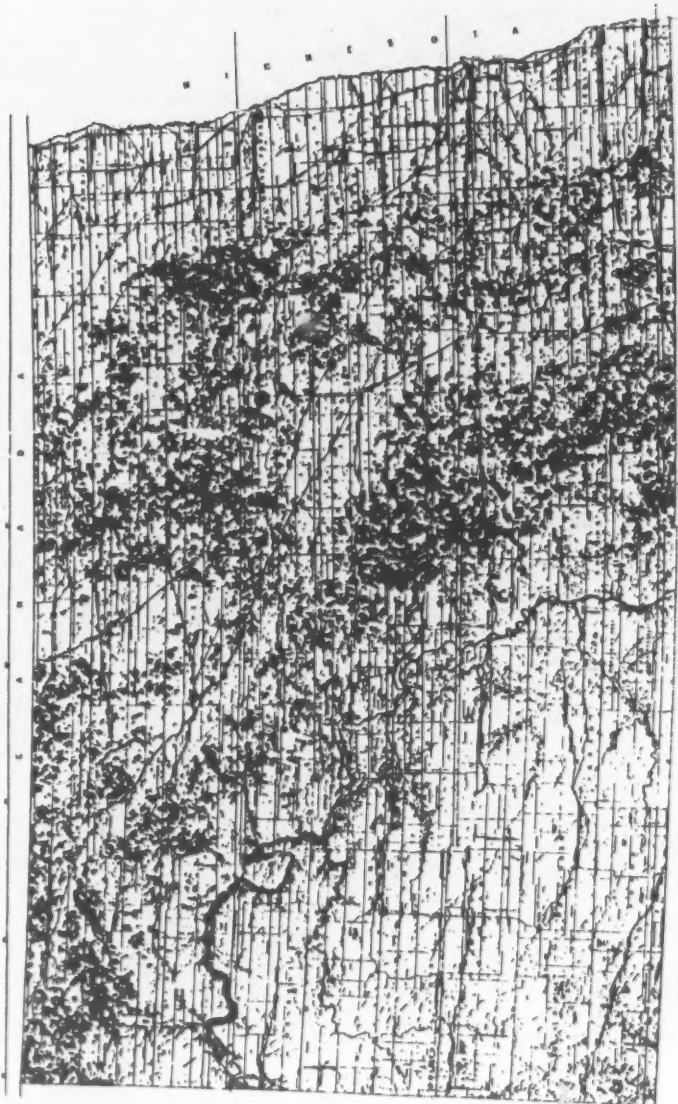
The North Dakota Corn Growers Association appreciates doing business in the United States; however, we must be a least cost producer with workable guidelines to compete with the foreign producer. Every Congressman should be required to cultivate corn with headlands around wet areas before they pass such ridiculous laws as in Swampbuster.

The Elm River Watershed Dam #3 is located on my property and contains unlimited ducks with empty shotgun shells surrounding the lake. There are 10 quarters of U.S. Fish and Wildlife easement land located across the road north of the dam that are never hunted and provide only an eyesore and inconvenience to the public. It is recommended that Congress be more aware of ramifications of their actions before passing laws detrimental to the economy.

The United States Government already owns a large share of the North Dakota wetlands as indicated on the enclosed map. North Dakota has overdone it's requirements for wetland preservation in the state (probably 100 fold) compared to other states and it's time the United States Government show respect for the rights of the local landowner.

NORTH DAKOTA
U.S. FISH AND WILDLIFE SERVICE
FEE AND EASEMENT AREAS

Does not include state owned lands



BRYSON

BILL AND ARLENE

OAK GROVE FARM
RURAL ROUTE 2 BOX 181
ALDEN, MINNESOTA 56009

PHONE 507-876-3413

Statement of William H. Bryson
before the
Senate Appropriations Committee
Subcommittee on Agriculture,
Rural Development and Related Agencies

January 26, 1988



Perhaps all we are preserving is the choice.

I am William H. Bryson. I have been a soil and water conservation district supervisor since 1968, was appointed by the Governor to the Minnesota Soil Conservation Board in 1981 and 1982, and was President of the Minnesota Soil and Water Conservation Districts in 1983 and 1984. I also served on the national council of the National Association of Conservation Districts (NACD) in 1984 and 1985.

I own and operate a 370 acre crop and livestock farm near Alden Minnesota. I had a 35-cow Grade A dairy operation from 1945 to 1978 and have had a 30 cow cow-calf beef operation from 1970 to the present. Since 1966 I have voluntarily set aside an 18 acre woodlot and an 18 acre wetland complex for wildlife. I do not even graze this reserve. I receive no compensation for it. I have conducted a profitable farm operation every year except one since 1945!

I am here today to support retaining the Swampbuster provisions of the 1985 Farm Bill, also known as the Food Security Act of 1985.

In April of 1984, I was one of about 45 people who met with former Secretary of Agriculture John Block, and the then Chief of the Soil Conservation Service, Peter Myers at Mr. Myers' farm in Missouri for a "Conservation Roundtable" to discuss the features that we felt should be a part of the new farm bill. What finally evolved as the Food Security Act of 1985 included most of the recommendations that came from the "Roundtable," including a continued price support structure and including the conservation and production stabilization features of cropland set-aside, the Conservation Reserve Program, conservation compliance, and the Sodbuster/Swampbuster program. These last two conservation provisions were intended to keep fragile and sensitive lands not in production from being converted to further production of crops that were already in surplus supply. They were, in short, restrictions placed on farmers in return for economic program benefits.

What has been the result of this legislation? Farm income has risen considerably. But about one-half of this gross income is in the form of farm program payments -- price deficiency payments, paid set-aside acres, and the Conservation Reserve Program. Our county Extension Director told farmers at a meeting last week, "You have to participate in the feed grain program. It's the only game in town." He also said that our nation has the capacity now to produce 27% more grain than we can use and export. We must, he said, reduce production. And, he added, we must observe Swampbuster and Sodbuster rules to maintain our eligibility for the program.

Drainage activity in Minnesota slowed almost to a standstill in the early 1980s. The farm economy and grain prices were so bad that drainage was not economically feasible. The 1985 Farm Bill changed that.

Swampbuster provisions of the law were intended to not only protect wetlands, as a valuable natural resource in their own right, from drainage, but also to keep American agriculture from increasing the capacity to produce commodities already in surplus supply. The Swampbuster provisions of the Act helped make an expensive farm bill more acceptable to Congress as a whole. Farmers were simply asked to give up the right to destroy valuable wetlands in exchange for the economic security and stability the Act provides.

Has it worked? John Edwards, Minnesota's Assistant State SCS Soil Conservationist, told southeast Minnesota SCS and ASCS employees at a training session in Rochester two weeks ago, that 30,000 acres of wetlands have been drained in Minnesota since December 23, 1985. Landowners have only certified 15,000 of these acres. Landowners converted the remaining acres without contacting their local SCS office. Edwards said the problem is many landowners are convinced they can ignore the Swampbuster provisions because they won't ever be caught. Our number one problem, he said, is convincing landowners that we have a viable system that cannot be ignored.

ASCS annually photographs all cropland with 35mm slides. Converted lands could be identified quickly by reviewing slides over the past few years. Fifteen percent of the cropland in each county is checked each year and slides are kept on file for at least seven years. Under present rules, Swampbuster violators should be denied program benefits.

Stan Schrock, a compliance officer with the Iowa ASCS, said that Iowa farmers are not ignoring the Swampbuster provisions, but that there may be some farmers who are convinced that the conservation provisions of the 1985 farm bill will never be fully implemented.

Ron Nargang, Director of Minnesota Department of Natural Resources' Division of Waters and the former Director of the Minnesota Soil and Water Conservation Board, says Minnesota had more wetland drainage last year than in the ten previous years! Mr. Nargang feels "The rules are fine, the training given SCS and ASCS personnel is fine, but we are staring at a massive policy conflict. Local ASCS committees are granting exemptions to Swampbuster 'at the drop of a hat.' " He adds -- "The thrust of the program was to take land out of production and improve the farm economy. The most immediate result of the improved farm economy has been the increased drainage of wetlands for conversion to farming."

I have talked to many others about the Swampbuster program the last two weeks. Mr. Myron Stanke, a farmer and Soil and Water District Supervisor from Steele County, who is the chairman of the 11 county Hiawatha Valley Resource Conservation and Development project in Southeast Minnesota, said changes in Swampbuster would be "insane at this time." A U.S. Fish and Wildlife Service biologist and a Minnesota Division of Wildlife Manager felt the "commenced project" exemptions had passed their peak and that NO CHANGES should be made in Swampbuster rules. The manager of the Freeborn County ASCS office simply said the rules were being followed. The Minnesota Commissioners of Agriculture and Natural Resources, by joint letter to ASCS, USDA, in October of 1986, voiced "strong support" for the Sodbuster/Swampbuster program as one that would have "a major positive role in preserving our State's (and the Nation's) soil, water, and wetland resources."

Major emphasis has been given to the wildlife enhancement attributes of wetlands. I agree. But learning more about the other values wetlands provide to society as a whole, such as improving water quality, modifying flood flows, and recharging underground aquifers, may make the wildlife benefits seem incidental. The more we learn about wetlands, the more valuable they become.

- 3 -

The 1985 Food and Security Act (the Farm Bill) is working. SCS and ASCS personnel are well trained in administering the program. The Act has improved the farm economy and provided some stability for agriculture as an industry and the nation as a whole. I urge this committee to leave the 1985 Farm Bill, including Swampbuster, as it is!

Thank you for your consideration of my thoughts on this matter. If you have any questions for me, I will attempt to answer them.

Statement of
R. Neil Sampson
to the
Senate Agriculture Committee
March 24, 1988

There is a new era emerging in American agriculture, an era that promises to re-establish a constructive relationship between farming and wildlife. This new era has been ushered in by the conservation provisions contained in the 1985 Farm Bill.

Probably the most significant of the several historic conservation features of that Bill, over the long run, will be the "conservation compliance" provision. Under these new rules, farmers who cultivate highly erodible land will need to have an approved conservation system on their land, or at least have developed an accepted plan and implementation schedule, in order to qualify for federal farm program payments after 1990. By 1995, they will be expected to have those plans implemented. In other words, farmers will soon be expected to meet minimum conservation standards in order to receive federal benefits. That changes the "bargain" between the federal government and farmers in a substantial way, and the impact will have significant impacts on the agencies and programs involved.

This new reform in the relationship between the federal government's farm programs and the Nation's farm and ranch operators should, if it works the way it is envisioned, result in major improvements in the use and treatment of agricultural land. That could result in reduced soil erosion, water runoff, pollution, and permanent land degradation. At the same time, there is little doubt that it will improve wildlife habitat markedly.

But the transition into conservation compliance does not promise to be an easy one, and there is certain to be strong and vocal resistance on the part of some farmers as they begin to understand what is expected of them. This will translate into political controversy, both at the local and national levels.

At the national level, it is reasonable to anticipate efforts to overturn the conservation compliance provisions in the 1985 Farm Bill, or at least extend the period of transition before the new rules take effect. That will no doubt begin during the upcoming debate over the 1990 Farm Bill. The coalition of conservationists and organizations who helped support the enactment of the 1985 Act will need to fight to prevent its emasculation in Congress.

The issues are likely to more clear-cut than they have been in the past 8 years. In both 1981 and 1985, the Reagan Administration proposed to phase out most or all of the price support, loan and other farm programs that provide economic support to farmers. If those programs were to vanish, farmers could ignore conservation compliance requirements with little or no immediate cost or

penalty. Obviously, that did not happen. The economic collapse of American agriculture forced policymakers to create more farm subsidies, not less, and conservation compliance became a very important aspect of farm policy.

Its a little early to guess right now, but it seems certain that the economic situation in agriculture will force the 1990 Farm Bill to contain a continuing program of production controls associated with price supports. If that is the case, those programs will be very important to most farmers, and conservation compliance will be equally critical. Therefore, the battle in 1989 and '90 will probably center around attempts to weaken or eliminate the compliance provisions or, at least, stretch the deadlines. Again, its too early to tell, but the current mood of Congress suggests that it will be possible for conservationists to defeat those attempts. Congress is out of patience with farmers who want federal largess, but refuse to farm their land in a socially responsible way.

What may be more difficult -- and dangerous -- however, will be the last-ditch efforts of the program's opponents. If they lose in the attempt to water down the bill, they will turn attention to the funding of the agencies that administer it. Cutting funding for federal agencies is a popular political cause, and assuring that the conservation provisions cannot possibly function is possible if the budget-cutters succeed.

At the local level, however, the issues will be less clear-cut. Both the Soil Conservation Service and the Agricultural Stabilization and Conservation Service face a heavy workload as they prepare conservation plans and certify farmers' performance. They have begun much of the work already, and in some states most, if not all, of the farmers who will need to develop farm plans have been identified, located, and informed of their options. This is, of course, happening at a time while federal agencies face budget cuts, personnel limits, and reduced staffs.

The Soil Conservation Service has never had a role that approximates regulatory enforcement as closely as this one. Historically, they have succeeded in being accepted by rural people because their field technicians were seen as supportive helpers, not policemen. The agency now faces significant institutional change, and challenge, as farmers who have long accepted soil surveys and other technical information as helpful but largely inconsequential now begin to question each detail closely because its interpretation means many thousands of badly-needed dollars in their pocket.

But USDA has given this program its highest priority support, and Congress has responded with supplemental funding that has allowed these agencies to fairly well maintain their staff levels, so the USDA effort to implement conservation compliance is going about as well as might be expected at the moment. The real institutional crunch lies ahead, but that is a fact not lost upon the administrators of the agencies, and they are doing everything possible to gear up for the inevitable challenges that will mark the decade of the '90's.

One example is the intense effort being made by SCS to get as many farmers into the process of developing a plan as possible. In a small informal sample of SCS field offices recently, I came away with the impression that somewhere around 10 percent of the farmers needing plans have already prepared them, or are fairly far along in the process. That sounds encouraging, but not too surprising. There have always been a fair percentage of farmers who have been conservation-conscious, and who have been fairly cooperative with the voluntary programs of the past. If these percentages begin to approach 50% somewhere in early 1989, it should indicate that the agency has moved about as well as could be expected.

Local conservation district supervisors and ASC committeemen are faced with the job of establishing and enforcing local standards, based upon SCS technical guides. That also seems to be going along fairly well at the moment, since farmers facing 1990 and 1995 deadlines are fairly easy to deal with. Seven years is a long time, and few farmers are feeling the urgency of the matter at this time.

As those deadlines come closer, however, it will be necessary to reach farmers who have never cooperated with conservation programs, and who would probably rather fight than switch now. It will also catch those who have had the bad judgment (or bad fortune) to be farming particularly difficult land. For the most part, that land has never been too profitable, so the farmers who have the most serious (and probably expensive) land use changes to make, or conservation practices to install, are those who can least afford it. These farmers will test the system severely.

Both SCS technicians and conservation district officials will be pressured by neighbors for more time and leeway in meeting conservation standards. These pressures will be particularly difficult in areas where marginal lands or economic conditions cause serious hardship in changing farming methods. Entire communities may face the possibility that the farm economy, as they have known it in recent years, could collapse. The local political pressures will be intense, and personal. This will not be a particularly easy time to work for USDA, or to serve on one of the local conservation organizations.

The USDA rules for meeting these situations were clarified in the Federal Register on February 11, 1988. In this final rule, the procedure for "alternative conservation systems" were set out. These systems will be designed locally to provide options that will help achieve a substantial reduction of existing soil losses, but at the same time be cost-effective.

Now, what does this mean? To many, it will sound like an easy cop-out, a way to let farmers continue the old ways and ignore excessive levels of soil erosion. Maybe, but I don't think so. If the rule is followed, and local groups and people are involved in establishing the conservation systems, then the systems are reviewed by SCS at both the regional and state office levels, the outcome should be pretty good. It won't be perfect everywhere, but it will be a giant step in the right direction. And it may defuse a potentially deadly political backlash.

Under the rule, for highly erodible croplands that were in production prior to December, 1985, the farmer can use any system that is contained in the SCS technical guide. Some of those systems may result in lowering soil erosion rates to the tolerable level, some may not. Those that do not will still reduce erosion significantly, but fall short of reaching the ultimate goal because gaining the last few increments of erosion reduction is unacceptably expensive.

Farmers who have converted highly erodible land into crops since December 1985 will have no such economic leeway. They must adopt systems that bring soil erosion within the tolerable range, no matter what the cost. The net effect is sort of an "economic common-sense" grandfather clause.

The basis for the concept of "alternative conservation systems" is fairly straight-forward. Consider this example, which is fictitious but not uncommon: A field currently is growing corn and soybeans, with clean cultivation, and suffering soil losses of 25 tons/acre/year. Installation of conservation tillage and contour farming will lower soil loss to an estimated 7 ton level, at a cost to the farmer of fairly modest levels. The 7 tons, however, still exceed the 5 ton estimate of allowable soil loss (or "T" level). Moving from 7 tons to 5 tons will reduce the farmer's options significantly, and drive costs dramatically higher. Terraces might cost \$500 per acre -- a level that cannot be paid back with corn-soybean profits in today's world. Or, the farmer could plant the land to grass or trees which, without supplemental government payments, would not pay the taxes and holding costs for the land, let alone provide annual income to support the family. What to do?

Letting this farmer go to the 7 ton level means a reduction of significant proportions in terms of soil loss, while allowing him to stay in business and probably not inciting him to such anger that he decides to fight the program. Forcing him to 5 tons may either put him out of business, or convince him that his most cost-effective option is to begin writing his Congressman and donating funds to a national anti- group. Which option is best, both for conservation and for the long-term public interest? My vote goes to the "alternative" proposal. Getting something is better than losing everything.

A logical question, of course, is "how much are we giving away when we allow alternative conservation systems." This is, of course, virtually impossible to predict, but a recent SCS exercise attempted it. Their best estimates suggest that highly erodible croplands are contributing 1.8 billion tons of soil loss to the national erosion statistics. With currently foreseen alternative conservation systems applied, the predicted annual loss will drop to around 400 million tons -- a significant reduction. Now, with that estimated accomplishment, we would still have some 24 million acres eroding in excess of 5 tons/acre/year. The problem would still not be totally solved, but the gains would be historic indeed.

What is happening, to be sure, is the most significant opportunity for positive institutional change since the creation of the Soil Conservation Service and soil conservation districts in

the 1930's. But, as we all know, institutional change is usually evolutionary in nature, and somewhat slow. Not all district officials are ready for the kind of responsibilities that are being placed upon them. They will, if we are patient and persistent, either grow into their new tasks or be replaced by people who find the new roles challenging. Either way, the system improves.

Another view, expressed to me by some young soil conservationists, is that this is really a high-stakes game for the whole conservation district movement. Farmers are starting to realize what is at stake, and the intense media effort by USDA will broaden that realization. Districts that cave in under local political pressures and try to press for alternative conservation systems that do not accomplish adequate conservation will be scorned as ineffectual by the very farmers upon whom they depend for their success. In addition, they will create conflict with SCS technicians, who are likely to press for more demanding standards. In other words, conservation districts have a historic chance to grow in stature, but if they fail to grasp the opportunity responsibly, they could be cast aside by both their supporters and their critics as ineffectual relics of a past era.

That raises a serious institutional problem. Many may welcome the passing of the old order. But students of institutional changes may ask "can we replace these institutions?" Does anyone believe that a unit of local special-purpose government with the broad powers and capabilities of conservation districts could be re-created in the political climate of most states today? I am convinced it could not happen. Better to reform the institutions that we have, even if slowly, than to throw them out hoping for something better to emerge. The risks of being left with nothing are far too great.

Watching this historic scenario unfold, and acting in ways that are supportive and helpful, will be a challenge for other conservationists, as well. There will be calls for strong, no-compromise regulations that force farmers into compliance as rapidly as possible. Some professionals will be appalled at the lack of technical specificity in the SCS technical guides, the latitude given to develop alternative conservation systems, or to the degree of local latitude and judgment that USDA will allow conservation districts and ASC committees. Such local control is a prescription for avoiding the letter of the law, it will be argued.

While fully understanding the desire of conservationists to press for conservation compliance as soon as possible, it is also important to realize that there is much to be lost from taking too hard a line on implementation of the conservation compliance program. There are very real problems in meeting conservation standards in some parts of the country. The technical data upon which those standards are based are not equally valid in every area. In those areas where virtually every farm faces radical changes or bankruptcy, the calls for cost-effective "alternative conservation systems" will be intense. In those places, the best strategy to promote soil conservation will be to take part in public meetings and technical conferences to help assure that the resulting "alternative systems" contain as much "conservation" as possible.

We face a delicate situation where some local latitude is needed. We also know for certain that limits to local latitude must be established and maintained, or there will be no end to the delay and confusion that can be created. So we need to support a reasonable degree of "slippage" in implementing the conservation compliance provisions while, at the same time, holding forth the expectation that farmers and USDA agencies will move with reasonable haste to meet the spirit as well as the letter of the law.

It is a situation in which USDA and the local conservation districts will need constructive critics, but those critics will have to be cautious not to be too strident. If the pressures mount so high that farmers feel too threatened, the result will be an intensive national political campaign to destroy the law, or cripple the agencies that administer it. If that were to happen, and be successful, conservationists would lose much more than they would gain, and the Nation will lose its best opportunity in 50 years to bring some sense to the way that national agricultural policy drives the use and management of our precious farmlands.

(Adapted from a speech written by Neil Sampson for the 53rd North American Wildlife and Natural Resources Conference, March 18-23, 1988, in Louisville, KY.)

100TH CONGRESS
1ST SESSION

S. 1521

To amend the Food Security Act of 1985 to increase the number of acres placed in the conservation reserve program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22 (legislative day, JUNE 23), 1987

Mr. NUNN (for himself, Mr. COCHRAN, Mr. FOWLEE, Mr. HEFLIN, Mr. HOLLINGS, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Food Security Act of 1985 to increase the number of acres placed in the conservation reserve program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EXPANSION OF CONSERVATION RESERVE.**

4 (a) **ACREAGE REQUIREMENT.**—Section 1231 of the
5 Food Security Act of 1985 (16 U.S.C. 3831) is amended—

6 (1) by striking out subsection (b) and inserting in
7 lieu thereof the following:

1 “(b)(1) The Secretary shall enter into contracts with
2 owners and operators of farms and ranches containing highly
3 erodible cropland to place in the conservation reserve—

4 “(A) during the 1986 through 1987 crop years, a
5 total of not less than 35, nor more than 45, million
6 acres;

7 “(B) during the 1986 through 1988 crop years, a
8 total of not less than 45, nor more than 65, million
9 acres;

10 “(C) during the 1986 through 1989 crop years, a
11 total of not less than 55, nor more than 65, million
12 acres;

13 “(D) during the 1986 through 1990 crop years, a
14 total of not less than 65 million acres.”; and

15 (2) in subsection (c)(1)(B), by striking out “(5)”
16 and inserting in lieu thereof “(1)(B)”.

17 (b) INCLUSION OF OTHER LANDS.—Section 1231(c)(2)
18 of such Act (16 U.S.C. 3831(c)(2)) is amended by adding at
19 the end thereof the following new sentence: “Not later than
20 January 1, 1988, the Secretary shall submit to the Commit-
21 tee on Agriculture of the House of Representatives and the
22 Committee on Agriculture, Nutrition, and Forestry of the
23 Senate a detailed plan and report indicating the manner in
24 which the Secretary may implement this paragraph, includ-
25 ing a discussion of the options for cooperating with agencies

1 of State government in identifying areas to be subject to this
2 paragraph and administering any program created under this
3 paragraph.”.

4 SEC. 2. CONSERVATION RESERVE INCENTIVES.

5 (a) AUTHORITY.—Section 1231(b) of the Food Security
6 Act of 1985 (16 U.S.C. 3831(b)) (as amended by section 1(a))
7 is further amended by adding at the end thereof the following
8 new paragraph:

9 “(2) The Secretary may offer an owner or operator of
10 land that is eligible to be placed in the conservation reserve
11 such incentives as the Secretary determines are necessary to
12 achieve the acreage requirements of paragraph (1)(B), includ-
13 ing the incentives described in section 1233(b).”.

14 (b) INCENTIVES.—

15 (1) IN GENERAL.—Section 1233 of such Act (16
16 U.S.C. 3833) is amended—

17 (A) by changing the title to read as follows:

18 “DUTIES AND POWERS OF THE SECRETARY”;

19 (B) by inserting “(a)” after the section design-
20 nation; and

21 (C) by adding at the end thereof the follow-
22 ing new subsection:

23 “(b) To encourage an owner or operator to enter into a
24 contract under this subtitle, the Secretary—

1 “(1) may make an advance payment in cash or in-
2 kind of up to 50 percent of the total amount of rental
3 payments required to be paid under subsection (a)(2);

4 “(2) may make (in addition to any other payment
5 authorized under this subtitle) a bonus payment in cash
6 or in-kind to an owner or operator who retires perma-
7 nently, from the cropland base and allotment history
8 applicable to acreage placed in the reserve, a number
9 of acres equal to the number of acres placed in the
10 reserve;

11 “(3) may permit a specified number of acres
12 placed in the conservation reserve to be considered as
13 reduced or set-aside acreage under an acreage limita-
14 tion or set-aside program established under section
15 107D(f), 105C(f), 103A(f), or 101A(f) of the Agricul-
16 tural Act of 1949 (7 U.S.C. 1445b-3(f), 1444e(f),
17 1444-1(f), or 1441-1(f)), if the Secretary determines
18 that payments made under subsection (a)(2) are, on av-
19 erage, substantially less than payments made as a
20 result of compliance with such program;

21 “(4) may make (in addition to any other payment
22 authorized under this subtitle) a bonus payment in cash
23 or in-kind to meet the requirements of section 1232(c);
24 and

5

1 “(5) shall expand the quantity of land eligible for
2 the program to meet the requirements of section
3 1232(c).”.

4 (2) PAYMENT SCHEDULE.—Section 1234(a)(2) of
5 such Act (16 U.S.C. 3834(a)(2)) is amended—

6 (A) by striking out “or” at the end of sub-
7 paragraph (A);

8 (B) by striking out the period at the end of
9 subparagraph (B) and inserting in lieu thereof
10 “; or”; and

11 (C) by adding at the end thereof the follow-
12 ing new subparagraph:

13 “(C) as provided in section 1233(b)(1).”.

14 SEC. 3. COMMERCIAL USE OF CONSERVATION RESERVE
15 ACREAGE.

16 Section 1232(a)(7) of the Food Security Act of 1985 (16
17 U.S.C. 3832(a)(7)) is amended by striking out “contract in
18 response to a drought or other similar emergency;” and in-
19 serting in lieu thereof “contract—

20 “(A) in response to a drought or other simi-
21 lar emergency; or

22 “(B) if the Secretary—

23 “(i) determines that allowing such com-
24 mercial use would not have an adverse effect
25 on existing commercial operations involving

6

1 forage in the agricultural economy of the
2 particular area in which the land is located;
3 and

4 “(ii) makes a downward adjustment in
5 the rental payments made or to be made
6 under section 1233(a)(2) to reflect the proba-
7 ble economic return to the farm operation as-
8 sociated with the production of a forage crop
9 on lands placed in the reserve;”.

10 **SEC. 4. OWNERSHIP OR OPERATION REQUIREMENT.**

11 (a) **IN GENERAL.**—Section 1235(a)(1) of the Food Se-
12 curity Act of 1985 (16 U.S.C. 3835(a)(1)) is amended—

13 (1) by striking out “or” at the end of subpara-
14 graph (B);

15 (2) by striking out the period at the end of sub-
16 paragraph (C) and inserting in lieu thereof “; or”; and

17 (3) by adding at the end thereof the following new
18 subparagraph:

19 “(D) the Secretary determines that—

20 “(i) the land was acquired prior to July 1,
21 1987, by the current owner or the predecessor of
22 the current owner, through involuntary foreclo-
23 sure or through a deed in lieu of foreclosure; and

1 “(ii) the current owner is an operator (as de-
2 fined in section 704.2 of title 7, Code of Federal
3 Regulations).”.

4 (b) ACCEPTABILITY OF CONTRACT OFFERS.—Section
5 1234(c) of such Act (16 U.S.C. 3834(c)) is amended by
6 adding at the end thereof the following new paragraph:

7 “(4) In determining the acceptability of contract offers,
8 the Secretary shall consider—

9 “(A) the fair market value of the land that is the
10 subject of the contract, without rental payments; and

11 “(B) the revenue stream associated with the bid;
12 to ensure that, during the term of the contract, the rental
13 payments do not pay for the land.”.

14 SEC. 5. USE OF COMMODITY CREDIT CORPORATION.

15 Subsection (a) of section 1241 of the Food Security Act
16 of 1985 (16 U.S.C. 3841(a)) is amended to read as follows:

17 “(a) During each of the fiscal years 1986 through 1990,
18 the Secretary shall use the facilities, services, authorities,
19 and funds of the Commodity Credit Corporation to carry out
20 subtitle D.”.

21 SEC. 6. WATER QUALITY PILOT PROGRAM.

22 Subtitle D of title XII of the Food Security Act of 1985
23 is amended by adding after section 1236 (16 U.S.C. 3836)
24 the following new section:

1 "SEC. 1237. WATER QUALITY PILOT PROGRAM.

2 "(a) IN GENERAL.—Not later than July 1, 1988, the
3 Secretary shall formulate and carry out, through the 1990
4 crop year, a ground water pilot program, in conjunction with
5 the conservation reserve program established under this sub-
6 title, through contracts to assist owners and operators of land
7 described in subsection (b) in conserving and improving the
8 soil and water resources of their farms or ranches.

9 "(b) ELIGIBLE LAND.—

10 "(1) IRRIGATION.—Land is eligible to be placed
11 in the pilot program established by this section if the
12 land—

13 "(A) is irrigated for the production of wheat,
14 feed grains, or cotton in an area identified by an
15 agency of the State or Federal government as
16 subject to the overdraft of ground water; or

17 "(B) is associated with an aquifer adversely
18 affected by such irrigation.

19 "(2) WATER QUALITY.—Eligible land shall also
20 include cropland that the Secretary determines, in con-
21 sultation with State agricultural and resource use
22 agencies, to be associated with water quality problems
23 stemming from agricultural and water management
24 practices, including the use of fertilizers and pesticides,
25 drainage systems, irrigation, and tillage practices.

1 “(c) DUTIES OF OWNERS AND OPERATORS.—Under
2 the terms of a contract entered into under this section, an
3 owner or operator, in addition to fulfilling the obligations de-
4 scribed in section 1232, must agree—

5 “(1) to retire permanently, from the base and al-
6 lotment history applicable to acreage placed in the re-
7 serve, a number of acres equal to the number of acres
8 placed in the reserve; and

9 “(2) not to use, for agricultural purposes, other
10 land drawing from the same water supply as land
11 placed in the reserve.

12 “(d) ADMINISTRATION.—

13 “(1) CONTRACTS.—Except where determined in-
14 appropriate by the Secretary, the Secretary shall con-
15 tract with owners or operators of land described in
16 subsection (b) in accordance with the terms and condi-
17 tions provided in this subtitle.

18 “(2) HIGHLY ERODIBLE LAND.—The term ‘highly
19 erodible land’ as used in this subtitle shall be consid-
20 ered to include land described in this section.”.

21 **SEC. 7. SOFTWOOD TIMBER.**

22 Section 608 of the Agricultural Programs Adjustment
23 Act of 1984 (7 U.S.C. 1981 note) is amended—

24 (1) in subsection (a)(1)—

10

1 (A) by striking out "may" the first place it
2 appears and inserting in lieu thereof "shall", and

3 (B) by striking out "marginal land (as deter-
4 mined by the Secretary)" and inserting in lieu
5 thereof "land"; and

6 (2) in subsection (g), by striking out "50,000" and
7 inserting in lieu thereof "200,000".

○